

Memorandum



Date: April 18, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Agenda Item No. 8(F)(1)

Subject: Recommendation for Approval to Award: Joint Development at the Omni Bus Terminal with Access to Adjacent Adrienne Arsht Center Metromover Station

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *Contract No. RFP-00152, Joint Development at the Omni Bus Terminal with Access to Adjacent Adrienne Arsht Center Metromover Station*, to Resorts World-Miami, LLC (Resorts World) for the development of the Omni Bus Terminal and Adrienne Arsht Center Metromover Station, including air rights over the real property, for the Department of Transportation and Public Works. The County issued a solicitation seeking proposals from experienced developers to achieve the highest and best economic and transit-related use of the Omni Bus Terminal and the Adrienne Arsht Center Metromover Station. The project includes a revenue-generating mixed-use development that (1) promotes maximum patronage of the transit system; (2) provides functional and aesthetic integration of the Adrienne Arsht Metromover Station and Omni Bus Terminal into the overall project; and (3) upgrades and/or redesigns the Metromover station, including the replacement of stairs, elevators, escalators, surveillance systems and flooring, while enhancing site illumination and pedestrian accessibility.

The Omni Bus Terminal and Adrienne Arsht Center Metromover Station (development site) is located within the City of Miami and consists of seven (7) contiguous parcels of property totaling approximately 0.987 acres. The negotiated agreements for the development site with Resorts World consist of a Development Agreement, Lease Agreement and an Easement. The easement is needed for construction-related development site ingress and egress. According to the terms of its proposal, Resorts World plans to construct a 300-room hotel and residential service apartments over the expanded bus terminal with retail space at ground level. Resorts World will also make numerous upgrades to the existing transit infrastructure, valued at approximately \$22 million. Under the Development Agreement, Resorts World shall submit all design and construction plans to the Department of Transportation and Public Works for review and approval prior to commencing any work on the project.

In addition to increasing density around the Adrienne Arsht Metromover Station, the proposed development project provides a substantial long-term revenue source for the County over the 90-year initial term of the lease. The proposed Development Agreement requires the developer to pay \$100,000 in minimum rent to the Department per year through the construction period of the project. Thereafter, the developer will make a one-time \$10 million payment to the County, and, subsequently, pay either 50 percent of gross revenues realized from the retail portion of the development, or \$300,000 per year, whichever is greater.

The proposed development will also have a very significant, positive economic impact on the community. While under construction, it is forecasted that the project will create 1,871 jobs and, once completed, will create 171 direct jobs. It will also stimulate the creation of 100 additional indirect jobs and provide significant revenue to the County and the City of Miami in the form of ad valorem taxes and impact fees.

Scope

The scope of this item is countywide in nature; however, the development site is located within Commission District 3, which is represented by Vice Chairwoman Audrey M. Edmonson.

Fiscal Impact/Funding Source

There will neither be County nor other governmental funding required to complete this project as it will be exclusively financed by the developer. There will be a positive fiscal impact to the County in the form of rent and transit improvements. The 90-year lease will generate an estimated \$54,850,000 over the term of the lease with a Net Present Value of \$26,862,569. All revenues will accrue to the Department of Transportation and Public Works.

Track Record/Monitor

Phillip Ford of the Internal Services Department is the Procurement Contracting Manager. The terms of the Development Agreement will be managed by Froilan I. Baez, Chief of Right of Way, Utilities and Joint Development, Department of Transportation and Public Works. A copy of the lease will be provided to the Property Appraiser's Office within 30 days of its execution.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38, including any cancellation, renewal and extension provisions.

Vendor Recommended for Award

A Request for Proposals (RFP) was issued under full and open competition on January 27, 2015. It was expected that there may be limited interest in this project due to the scale, nature (i.e., air rights over the real property) and location of the development site. Accordingly, one (1) proposal was received in response to the solicitation. The RFP method of award was used to obtain the best value to the County by conducting a qualitative review of proposals. The criteria used to evaluate proposals included the proposer's approach to the development site, experience, financial projections and strength and capability to secure financing. Resorts World is a foreign limited liability company formed for the purpose of submitting a proposal in response to this solicitation and thus currently has no employees to report in the chart below.

| Awardee | Principal Address | Address of Branch Offices or Headquarters in Miami-Dade or Broward* | Number of Employee Residents* | Principal |
|--------------------------|--|---|-------------------------------|----------------|
| Resorts World Miami, LLC | 1501 Biscayne Boulevard, Suite 500 Miami, FL | Same | Miami-Dade - 0 | Edward Farrell |
| | | | Broward - 0 | |
| | | | Percentage - 0 | |

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendors' employees who reside in Miami-Dade County or Broward County as compared to the vendor's total workforce.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists referenced includes convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There are no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision does not apply due to federal participation in the development site.
- The Small Business Enterprise (SBE) Selection Factor and Local Preference do not apply due to federal participation in the development site.
- The Living Wage Ordinance does not apply.



Alina J. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: April 18, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)
4-18-17

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-00152 TO RESORTS WORLD MIAMI, LLC WITH A POSITIVE FISCAL IMPACT TO THE COUNTY OF APPROXIMATELY \$54,850,000.00 OVER THE INITIAL 90-YEAR TERM OF THE LEASE AND PROVIDING FOR THE JOINT DEVELOPMENT AT THE OMNI BUS TERMINAL AND ADRIENNE ARSHT CENTER METROMOVER STATION SITE FOR THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS; APPROVING THE LEASE AND DEVELOPMENT AGREEMENT, LEASE AGREEMENT FOR AN INTERIM BUS TERMINAL, AND THE EASEMENT, OPERATION, AND MAINTENANCE AGREEMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL PROVISIONS CONTAINED THEREIN PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE AN EXECUTED COPY OF THE LEASE AGREEMENT TO THE PROPERTY APPRAISER'S OFFICE WITHIN 30 DAYS OF THE EXECUTION OF THE AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board approves award of Contract No. RFP-00152 to Resorts World Miami, LLC for the development of the Omni Bus Terminal and Adrienne Arsht Center Metromover Station site for the Department of Transportation and Public Works, in substantially the form attached hereto and made a part hereof, as set forth in the incorporated memorandum, with a positive fiscal impact to the County of approximately \$54,850,000.00 over the 90-year

term; and authorizes the County Mayor or County Mayor's designee to execute same and exercise all provisions contained therein pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Section 2. The County Mayor or County Mayor's designee is hereby directed to provide to the Property Appraiser's Office an executed copy of the Lease Agreement within 30 days of its execution.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

| | |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

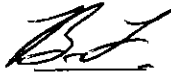
The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of April, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Bruce Libhaber

RFP No. 00152

**LEASE AND DEVELOPMENT
AGREEMENT**

**Joint Development
at the Omni Bus Terminal
with Access to
Adjacent Adrienne Arsht Center Metromover Station**

INDEX

| | | |
|--------------|---|----|
| ARTICLE 1 | Premises - General Terms of Lease | 1 |
| Section 1.1 | Lease of Land and Air Rights | 2 |
| Section 1.2 | Term of Lease | 2 |
| Section 1.3 | Conditions Precedent to Effectiveness of Lease | 3 |
| Section 1.4 | Conditions Precedent to Commencement of Construction of Phase 1 | 3 |
| Section 1.5 | Performance and Payment Bonds | 7 |
| ARTICLE 2 | Definition of Certain Terms | 9 |
| ARTICLE 3 | Rent | 22 |
| Section 3.1 | Rent..... | 22 |
| Section 3.2 | Participation Rent..... | 23 |
| Section 3.3 | Payment of Participation Rent | 23 |
| Section 3.4 | Gross Income | 24 |
| Section 3.5 | Landlord's Right to Verify and Audit Information Submitted | 25 |
| Section 3.6 | Late Payments | 26 |
| Section 3.7 | Discontinued Use of Station or System | 26 |
| Section 3.8 | Approved Restriction Adjustments..... | 27 |
| Section 3.9 | Payment If Right to Develop Demised Premises is Sold, Assigned or Transferred | 28 |
| ARTICLE 4 | Development of Land and Construction of Buildings..... | 28 |
| Section 4.1 | Land Uses..... | 28 |
| Section 4.2 | Development Rights and Construction Phases | 29 |
| Section 4.3 | Conformity of Plans | 31 |
| Section 4.4 | Design Plans; MDT Review and Approval Process | 32 |
| Section 4.5 | Construction Plans | 34 |
| Section 4.6 | As-Built Plans | 34 |
| Section 4.7 | Tenant Obligations..... | 34 |
| Section 4.8 | Construction Costs | 35 |
| Section 4.9 | Progress of Construction..... | 35 |
| Section 4.10 | Site Conditions..... | 35 |
| Section 4.11 | Ownership of Improvements..... | 36 |
| Section 4.12 | Mutual Covenants of Non-Interference | 36 |
| Section 4.13 | Connection of Buildings to Utilities | 37 |
| Section 4.14 | Connection Rights..... | 38 |
| Section 4.15 | Damages and/or Service Interruptions | 38 |
| Section 4.16 | Art in Project..... | 39 |
| Section 4.17 | Off-site Improvements | 39 |
| Section 4.18 | Signage and Landscaping of Entrances..... | 39 |
| Section 4.19 | Designation of Landlord's Representative | 39 |
| Section 4.20 | Additional Work | 41 |
| Section 4.21 | Landlord's Right to Verify and Audit Construction Information Submitted | 41 |
| ARTICLE 5 | Payment of Taxes, Assessments..... | 42 |
| Section 5.1 | Tenant's Obligations for Impositions | 42 |

| | | |
|--------------|--|----|
| Section 5.2 | Contesting Impositions | 43 |
| ARTICLE 6 | Surrender | 44 |
| Section 6.1 | Surrender of Demised Premises..... | 44 |
| Section 6.2 | Removal of Personal Property or Fixtures..... | 44 |
| Section 6.3 | Subject to Rights of Association..... | 44 |
| Section 6.3 | Rights to Personal Property After Termination or Surrender | 45 |
| Section 6.5 | Survival..... | 45 |
| ARTICLE 7 | Insurance..... | 45 |
| ARTICLE 8 | Operation..... | 46 |
| Section 8.1 | Control of Demised Premises; Maintenance..... | 46 |
| Section 8.2 | Non-Interference | 47 |
| Section 8.3 | Repair and Relocation of Utilities..... | 47 |
| Section 8.4 | Rights to Erect Signs; Revenues Therefrom | 48 |
| Section 8.5 | Landlord's Signs Upon Demised Premises | 49 |
| Section 8.6 | Tenants' Signs in Terminal and Station..... | 50 |
| Section 8.7 | Creation of Common Ownership | 50 |
| ARTICLE 9 | Repairs and Maintenance of the Premises..... | 50 |
| Section 9.1 | Tenant Repairs and Maintenance..... | 50 |
| Section 9.2 | Landlord Repairs and Maintenance | 51 |
| ARTICLE 11 | Compliance with Laws and Ordinances | 51 |
| Section 10.1 | Compliance by Tenant and Landlord..... | 51 |
| Section 10.2 | Contest by Tenant | 52 |
| ARTICLE 11 | Changes and Alterations to Buildings by Tenant | 52 |
| ARTICLE 12 | Discharge of Obligations..... | 53 |
| Section 12.1 | Tenant's Duty | 53 |
| Section 12.2 | Landlord's Duty..... | 54 |
| ARTICLE 13 | Use of Premises | 54 |
| Section 13.1 | Use of Demised Premises by Tenant | 54 |
| Section 13.2 | Dangerous Liquids and Materials | 55 |
| Section 13.3 | Tenant's Duty and Landlord's Right of Enforcement Against Tenant and Successor and Assignee | 56 |
| Section 13.4 | Designation of Buildings by Name | 56 |
| ARTICLE 14 | Entry on Premises by Landlord | 56 |
| Section 14.1 | Inspection by Landlord of Demised Premises..... | 56 |
| Section 14.2 | Limitations on Inspection..... | 57 |
| ARTICLE 15 | Limitation of Liability | 57 |
| Section 15.1 | Limitation of Liability of Landlord..... | 57 |
| Section 15.2 | Limitation of Liability of Tenant | 57 |
| ARTICLE 15 | Damage and Destruction | 57 |
| Section 16.1 | Tenant's Duty to Restore | 57 |
| Section 16.2 | Landlord's Duty to Repair and Rebuild Station | 58 |
| Section 16.3 | Interrelationship of Lease Sections | 59 |
| Section 16.4 | Loss Payees of Tenant-Maintained Property Insurance | 59 |
| Section 16.5 | Repairs Affecting Station or Demised Premises..... | 60 |

| | | |
|---------------|--|----|
| Section 16.7 | Termination of Lease for Certain Destruction Occurring During Last Fifteen Years of the Term of this Lease | 60 |
| ARTICLE 17 | Mortgages, Transfers, Subleases, Transfer of Tenant's Interest, New Lease and Lease in Reversion | 61 |
| Section 17.1 | Right to Transfer Leasehold | 61 |
| Section 17.2 | Right to Mortgage Leasehold | 64 |
| Section 17.3 | Notice to Landlord of Declaration or Leasehold Mortgage | 65 |
| Section 17.4 | Notices to Leasehold Mortgagee(s) | 66 |
| Section 17.5 | Leasehold in Reversion and Right to New Lease | 67 |
| Section 17.6 | Rights to Sublease and Non-Disturbance to Sublessees and/or Space Lessees | 68 |
| Section 17.7 | Estoppel Certificates from Landlord | 69 |
| Section 17.8 | Limited Waiver of Landlord Lien | 69 |
| Section 17.9 | No Subordination or Mortgaging of Landlord's Fee Title | 70 |
| Section 17.10 | Transfer of Interest by Landlord | 70 |
| ARTICLE 18 | Eminent Domain | 70 |
| Section 18.1 | Taking of Entire Premises | 70 |
| Section 18.2 | Proceeds of Taking | 72 |
| Section 18.3 | Partial Taking; Termination of Lease | 72 |
| Section 18.4 | Partial Taking; Continuation of Lease | 73 |
| Section 18.5 | Temporary Taking | 74 |
| Section 18.6 | Additional Takings | 75 |
| Section 18.7 | Inverse Condemnation or Other Damages | 75 |
| Section 18.8 | Involuntary Conversion | 76 |
| Section 18.9 | Condemnation of Fee Interest | 76 |
| ARTICLE 19 | Default by Tenant or Landlord | 76 |
| Section 19.1 | Event of Default of Tenant | 76 |
| Section 19.2 | Failure to Cure Default | 77 |
| Section 19.3 | Surrender of Demised Premises | 80 |
| Section 19.4 | Rights of Landlord After Termination | 80 |
| Section 19.5 | No Waiver by Landlord | 80 |
| Section 19.6 | Events of Default of Landlord | 81 |
| Section 19.7 | Failure to Cure Default by Landlord | 81 |
| Section 19.8 | No Waiver by Tenant | 82 |
| ARTICLE 20 | Notices | 83 |
| Section 20.1 | Addresses | 83 |
| Section 20.2 | Method of Transmitting Notice | 84 |
| ARTICLE 21 | Quiet Enjoyment | 84 |
| ARTICLE 22 | Certificates by Landlord and Tenant | 84 |
| Section 22.1 | Tenant Certificates | 84 |
| Section 22.2 | Landlord Certificates | 85 |
| ARTICLE 23 | Construction of Terms and Miscellaneous | 86 |
| Section 23.1 | Severability | 86 |
| Section 23.2 | Captions | 86 |
| Section 23.3 | Relationship of Parties | 86 |

| | | |
|---------------|---|----|
| Section 23.4 | Recording | 87 |
| Section 23.5 | Construction | 87 |
| Section 23.6 | Consents | 87 |
| Section 23.7 | Entire Agreement | 87 |
| Section 23.8 | Successors and Assigns | 88 |
| Section 23.9 | Station and System Plans | 88 |
| Section 23.10 | Holidays | 88 |
| Section 23.11 | Schedules | 88 |
| Section 23.12 | Brokers | 88 |
| Section 23.13 | Protest Payments | 89 |
| Section 23.14 | Radon | 89 |
| Section 23.15 | Energy-Efficiency Rating Disclosure | 90 |
| Section 23.16 | Governing Law | 90 |
| Section 23.17 | Counterparts | 90 |
| Section 23.18 | Documents Incorporated and Order of Precedence | 90 |
| Section 23.19 | Vendor Registration and Forms | 90 |
| Section 23.20 | Conflict of Interest | 91 |
| Section 23.21 | Cooperation, Expedited Permitting | 92 |
| ARTICLE 24 | Representations and Warranties | 92 |
| Section 24.1 | Landlord's Representations and Warranties | 92 |
| Section 24.2 | Tenant's Representations and Warranties | 93 |
| ARTICLE 25 | Compliance With Federal Regulations | 93 |
| ARTICLE 26 | Station Pedestrian Bridge and Easement | 94 |
| Section 26.1 | Station Pedestrian Bridge | 94 |
| Section 26.2 | Station Pedestrian Bridge Easement Area | 94 |
| Section 26.3 | Approvals | 95 |
| Section 26.4 | Construction of Station Pedestrian Bridge | 95 |
| Section 26.5 | Ongoing Maintenance and Repair of the Station Pedestrian Bridge | 95 |
| Section 26.6 | Grants of Easements | 96 |
| Section 26.7 | Covenants Run With the Land | 97 |
| Section 26.8 | Successors and Assigns | 97 |
| Section 26.9 | Duration of Easement | 97 |
| Schedule 1.1 | Land and Air Rights Legal Description | |
| Schedule 1.3 | Phase I Improvements | |
| Schedule 1.4 | Sample Settlement Monitoring Plan | |
| Schedule 1.5 | Interim Bus Terminal Specifications | |
| Schedule 1.6 | Interim Bus Terminal Lease | |
| Schedule 7 | Interim Bus Terminal Site | |
| Schedule 7 | Insurance Requirements | |
| Schedule 22.2 | Form of Landlord's Estoppel Certificate | |

Omni Bus Terminal Lease and Development Agreement

THIS AGREEMENT OF LEASE AND DEVELOPMENT AGREEMENT ("Lease"), dated as of the ____ day of _____, 2016, made by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, through Miami-Dade Transportation and Public Works Department, having its principal office and place of business at 701 N.W. 1st Court, Miami, Florida 33136 (hereinafter called "Landlord" or "MDT"), and RESORTS WORLD MIAMI LLC, a Delaware limited liability company, having an office and place of business at 1501 Biscayne Boulevard, Suite 500, Miami, Florida 33132 (hereinafter called "Tenant").

W I T N E S S E T H:

- A. Landlord owns certain real property located in Miami-Dade County, Florida, as more particularly described on Schedule 1.1, attached hereto and made a part hereof (the "Land"), upon which it operates a Metrobus terminal.
- B. Landlord recognizes the potential for public and private benefit through a joint use and development of the Demised Premises, as defined herein, in order to promote transit usage and to further economic development in Miami-Dade County.
- C. Tenant agrees to maintain the Improvements (as hereinafter defined) during the term of this Lease to the extent indicated in this Lease and Landlord agrees to grant to Tenant certain access and use rights hereunder.
- D. Landlord and Tenant recognize the potential for public and private benefit through a joint use and development of the Land in order to promote public transit usage, improve the appearance, functionality and maintenance of the Station and the Bus Terminal in the vicinity of the Project and to further economic development in Miami-Dade County.
- E. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Demised Premises, to enable Landlord and Tenant to develop a unified project.
- F. It is hereby mutually covenanted and agreed by and between the Parties that this Lease is made upon the agreements, terms, covenants and conditions hereinafter set forth. Capitalized terms used herein shall have the definitions set forth in Article 2 hereof.

ARTICLE 1

Premises - General Terms of Lease

Section 1.1 Lease of Land and Air Rights.

In accordance with (a) Chapter 125, Florida Statutes; (b) the powers granted to Landlord pursuant to authority properly delegated by the Florida legislature; (c) the authority to lease air rights over real property belonging to Miami-Dade County; and, for and in consideration of the rents, covenants and agreements specified herein, and the easements reserved unto Landlord, its successors and assigns, Landlord agrees, pursuant to the terms of this Lease, and does hereby lease and demise unto Tenant, its successors and assigns, and Tenant does hereby take and hire, upon and subject to the conditions and limitations herein expressed, the Demised Premises, reserving to Landlord the rights described herein, to have and to hold the same unto Tenant, its successors and assigns for the term of this Lease.

Section 1.2 Term of Lease.

The term of this Lease shall commence on the Initial Commencement Date. The ending date of the initial term shall be 90 years from the Initial Commencement Date. Subject to the terms of the succeeding sentence, the term of this Lease shall automatically renew for one additional renewal term of 25 years, unless Tenant shall have exercised its right to cancel the automatic renewal by sending written notice to Landlord, at least twelve months prior to the expiration of the initial term, of its election not to renew this Lease. The renewal of this Lease for the renewal term shall also comply with, and be subject to, the terms of any then-applicable statute, if any, governing the renewal of this Lease for a period beyond 90 years from the Initial Commencement Date. The terms and conditions of the Lease during the renewal period shall be the same terms and conditions as are applicable during the initial term of this Lease, but without further payment of rent other than Participation Rent as provided in this Lease. The obligation to pay Development Period Rent shall begin on the Initial Commencement Date, the obligation to pay Participation Rent shall commence on the Participation

Rent Commencement Date, and the obligation to pay One Time Rent shall occur on the One Time Rent Payment Date.

Landlord shall deliver possession of the Demised Premises to Tenant on the Construction Commencement Date at which time Tenant may take possession thereof. Landlord further agrees that prior to the Construction Commencement Date, Tenant may enter upon the Demised Premises to perform studies, tests, evaluations and similar type inspections in coordination with Miami-Dade Transportation and Public Works Department (MDT).

Section 1.3 Conditions Precedent to Effectiveness of Lease.

This Lease shall not become effective unless and until the Federal Transit Administration ("FTA"), the Florida Department of Transportation ("FDOT") and the Miami-Dade County Board of Commissioners shall have approved the execution of this Lease.

Section 1.4 Conditions Precedent to Commencement of Construction.

Precedent to construction:

- (a) Tenant shall comply with the MDT submittal and review process by submitting the Preliminary Plans of the Project at the appropriate stage of the Project;
- (b) Tenant shall have submitted to Landlord a copy of a letter of intent that Tenant has received from a recognized lending institution, such as a bank, savings bank, savings and loan, pension fund, insurance company, real estate investment trust or other real estate investment entity, to finance construction of the Project, if such financing is being obtained;
- (c) Landlord has provided a sample settlement monitoring and action plan to Tenant, a copy of which is attached as Schedule 1.4 ("Sample Settlement Monitoring Plan"). Tenant shall prepare and submit to Landlord a settlement monitoring and action plan

which shall be based on the Sample Settlement Monitoring Plan (the "Settlement Monitoring Plan").

- (d) Tenant, at its cost, shall make all applications as are required to close Northeast 14th Terrace located east of Biscayne Boulevard and adjacent to the south side of the Land (such street being herein called "Closed 14th Terrace "), including without limitation, replatting applications required therefor. Tenant shall diligently pursue such closure in good faith (such processing being herein called the "Closure of 14th Terrace "). Landlord shall cooperate with Tenant in connection with the Closure of 14th Terrace, including without limitation, signing any application, plat or other document as a joint applicant. Landlord shall provide its signature to any such document within 14 days after request of Tenant. Upon completion of the Closure of 14th Terrace, Closed 14th Terrace shall automatically become part of the Land and the Air Rights. In the event that Tenant despite its diligent efforts is unable to do any of the items required by this paragraph within 26 months after the Initial Commencement Date, such inability shall result in an Unavoidable Delay and the provisions of Section 3.8 shall apply.
- (e) Tenant and Landlord agree that all construction and development plans within the Demised Premises or that impacts any County facilities shall be subject to the review and approval of MDT to assure the public safety and the System's integrity and operation. Precedent to any construction, excavation, demolition, restoration, testing or staging Tenant shall submit to the MDT Right-of-Way, Utilities and Joint Development Division through the MDT Director, or his or her designee, copies of plans, drawings and calculations showing the relationship between the proposed activities and the System, as defined herein. The drawings and calculations shall have

sufficient detail to allow MDT to determine if such activities are likely to impact the System and the extent of that impact, if any. The drawings and calculations shall include, but not be limited to, the following:

- (i) Site plan;
- (ii) Drainage area maps and calculations;
- (iii) Sheet piling and shoring drawings and calculations;
- (iv) Sections showing foundations in relation to System structures;
- (v) Structural drawings;
- (vi) Pertinent drawings detailing possible impacts on the System;
- (vii) Geotechnical reports;
- (viii) Settlement Monitoring Plan;
- (ix) Proposed sequence of activities.

Tenant shall submit three (3) sets, full-sized or half-sized print copies and an electronic copy of all such plans, drawings and calculations.

Any such proposed construction, excavation, demolition, restoration, testing or staging may commence only after MDT has completed its review and the MDT Director or designee has issued written approval of the plans, drawings and calculations. Notwithstanding anything herein, all construction shall be in compliance with the latest edition of the Miami-Dade County Adjacent Safety Manual or its replacement.

Landlord shall review plans, drawings and calculations within a reasonable period of time; however, such review periods may depend upon the volume, complexity and potential impact on transit facilities and operations but shall in no event exceed 60 days. Landlord reserves the right at all times to disapprove of plans, drawings and calculations in whole or in part if Landlord, in its sole discretion,

determines that transit operations or facilities may be unacceptably impacted and/or to request additional information. Tenant must immediately mitigate all such impacts as specified by Landlord and Tenant shall immediately remediate all damage or impacts caused by activities performed or authorized by Tenant, to the satisfaction of Landlord, at Tenant's sole expense. Additionally, Landlord shall have the right to slow or stop any activities that Landlord, in its sole discretion, determines to be potentially hazardous to transit systems, facilities, and/or operations or to Miami-Dade County employees, patrons or to the public. Landlord shall not incur any expense as a result of such actions. If Tenant, after proceeding in good faith, is unable to secure Landlord's consent to the plans, drawings and calculations within 180 days from the initial submission date, Tenant may, at its option, terminate this Lease and Tenant shall restore the Demised Premises to its condition prior to the commencement of Tenant's on-site physical due diligence. Tenant's obligation for any Rent not then paid shall terminate as of such date of termination. The provisions of Section 4.4(g) shall expressly apply to the Landlord, County or MDT consents and approvals under this Section 1.4

Section 1.5 Performance and Payment Bonds.

At least ten (10) days' before Tenant commences any construction work related to any portion of the Project or any materials are purchased from a supplier, Tenant shall execute, deliver to the County and record in the public records of the County, a payment and performance bond equal to the total cost of construction of the Project. Each payment and performance bond shall be in compliance with all applicable laws including the terms of Section 255.05, Florida Statutes, and in compliance with the requirements of Sections 255.05(1)(a) and (c), Section 255.05(3), and Section 255.05(6), and shall name the County and the Tenant beneficiaries thereof, as joint obligees. Tenant shall not allow any mechanics liens or materialman's liens, or liens, judgments or encumbrances of any kind ("Encumbrances"), to be placed on, or to cloud title of, Landlord's fee simple interest in the Demised Property and shall indemnify Landlord for any costs, expenses, or damages Landlord incurs by reason thereof, in the event that any such Encumbrance is not removed as a lien on the Landlord's fee simple interest in the Demised Property within thirty (30) days after Tenant receives written notice from Landlord demanding removal of such Encumbrance, and in which case such Encumbrance shall be deemed a Tenant Event of Default. Tenant shall promptly take all steps required to promptly remove or otherwise resolve all such Encumbrances of which Tenant has been given actual notice.

Alternatively to the 255.05 payment and performance bond, Tenant may: (1) provide the County with an alternate form of security in the form of a certified check that the County may deposit in a County-controlled bank account or an irrevocable letter of credit in a form and for an amount that is acceptable to the County ("Alternative Security"), to remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate all contractors performing improvements on the Project have been paid and the Project has obtained Final Completion, and such Alternative Security shall meet the specifications set forth below; (2) require that each prime contractor hired by Tenant to perform work

and/or make improvements on the Project shall provide a Performance Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to insure that his/her construction work shall be completed by the contractor or, on its default, his/her surety and shall name the County as an additional obligee and shall meet the specifications set forth below; and (3) each prime contractor hired by Tenant to perform work and/or make improvements on the Project shall provide a Payment Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to secure the completion of the Project free from all liens and claims of sub-contractors, mechanics, laborers and material men and shall name the County as an additional obligee and payee. The Alternative Security and the Bond(s) shall comply with the requirements of Section 255.05.

If Tenant provides the Alternative Security, Tenant shall also comply with the following obligations:

- I. Tenant shall obtain a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made.
- II. Lessee shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after payment is made.
- III. In the event Tenant's contractor(s) claim non-payment(s), and/or, fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, Tenant reserves the right but not the obligation to:
 - (i) Reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or
 - (ii) Appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).

In either case, Tenant shall within ten (10) business days of the County's notification to deposit an amount equal to the reduced/disbursed amount in the County's escrow account or increase the irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security posted.

ARTICLE 2 Definition of Certain Terms

The terms set forth below, when used in this Lease, shall be defined as follows:

- (a) ADA shall mean the Americans with Disabilities Act, as amended from time to time.
- (b) Affected Area shall mean the Metromover System and the area within thirty (30) feet of the Metromover System.
- (c) Affiliate of Tenant shall mean any entity controlled by Tenant, controlling Tenant or under common control of a party controlling Tenant.
- (d) Air Rights shall mean the right to exclusive control, occupancy, and use the vertical air space above the Omni Bus Terminal, to the extent provided in Article 26, the vertical air space within the Station Pedestrian Easement Area, and upon completion of the Closure of 14th Terrace, the vertical air space above Closed 14th Terrace, together with the right to maintain on the Land support columns, utility lines, stairwells, escalators, elevator shafts and pits and an entrance and service facility to support and service improvements constructed on such air space, subject to the provisions of this Lease and necessary and reasonable use by others.
- (e) Association shall mean any condominium association, property owners' or master association, or other third party group having ownership or other rights in any

condominium constructed on all or any portion of the Demised Premises, together with its members, and the successors and/or assigns of any of the foregoing.

- (f) Board shall mean the Board of County Commissioners of Miami-Dade County, Florida.
- (g) Building(s) shall mean the buildings or structures (as the context indicates) and other improvements to be erected on, above, or below the Demised Premises or a portion thereof in accordance with Article 4 below, and all equipment, furniture and fixtures located or to be located therein which are owned by Tenant (including any replacements, additions and substitutes thereof).
- (h) Certificate of Occupancy shall mean the certificate issued by the person or agency authorized to issue a certificate of occupancy or certificate of completion, as applicable, evidencing that the applicable Building(s) is (are) ready for occupancy in accordance with applicable Law or Ordinance.
- (i) Closed 14th Terrace shall be given the meaning in Section 1.4 herein.
- (j) Closure of 14th Terrace shall be given the meaning in Section 1.4 herein.
- (k) Code shall mean the Code of Miami-Dade County, as amended from time to time.
- (l) Commencement of Construction and "commenced" when used in connection with construction of a phase of Improvements as the case may be, shall mean the earlier of the filing of the notice of commencement under Florida Statutes Section 713.13 or the visible start of work on the Land including on-site utility, excavation or soil stabilization work, excluding any utility work authorized by Article 1. In order to meet the definition of "Commencement of Construction" or commenced herein, such filing of notice or visible start of work must occur after Tenant has received a building

permit for the particular phase of Improvements on which construction is proposed to commence.

- (m) Completion of Phase I Construction shall mean the date a Temporary Certificate of Completion is issued for the Phase I Improvements or, if a certificate of completion will not be issued by the City of Miami, the date the Phase I Improvements are in a state or condition that they could be used for the purposes intended. Tenant agrees to cause the Completion of the Phase I Construction to occur on or before the last day of the 48th month following the Initial Commencement Date. Tenant shall endeavor to give notice to Landlord of Tenant's estimated date of the Completion of Phase I Construction at least 180 days prior to such estimated date of Completion of Phase I Construction.
- (n) Construction Commencement Date shall mean the earliest date upon which (i) Tenant delivers possession and Landlord accepts possession of the Interim Bus Terminal Site and (ii) Landlord delivers possession of the Land to Tenant.
- (o) Construction Plans shall consist of final design plans for the Phase I Improvements or other Improvements, as applicable, as approved by Miami-Dade County, and Tenant, the drawings and specifications for which are in the format with sufficient detail as required to obtain building permits, if applicable, for such improvements and as further described in Section 4.5.
- (p) County shall mean Miami-Dade County, a political subdivision of the State of Florida.
- (q) Declaration shall mean a declaration of condominium or a declaration of covenants and other matters under which, in either case, the Demised Premises or any portion

thereof reflects separate ownership interests and includes an Association to operate or administer the property described therein.

(r) Demised Premises shall mean collectively and to the extent required for development of the Improvements and the Project:

- (i) the Land;
- (ii) the Improvements and any other improvements now or hereafter existing; and
- (iii) the Air Rights;

TOGETHER WITH:

- (A) all the right, title and interest of Landlord in and to the sidewalks, streets, avenues, curbs and roadways fronting on and abutting the Demised Premises except to the extent expressly reserved herein to the Landlord;
- (B) the drains, utility lines, utility or other easements, stairwells, escalators, elevator shafts and pits and head houses, and other improvements of the Landlord located on, in, beneath or in areas adjacent to the Demised Premises to be used in connection with the Project, substantially as contemplated and to the extent set forth in the Proposal and as shall be set forth in the Plans and Specifications;
- (C) all such rights of support and rights of use for the support of the Improvements and the Project thereon;
- (D) the right of access to erect, maintain, repair, renew and replace such stairwells, escalators, elevators and other facilities; and

- (E) the right of pedestrian ingress, egress and passageway to, from, over, beneath and across the Station and System which shall be necessary or desirable for entrance, exit and passageway to and from the Demised Premises, and to and from the Station and the System for the use in common of Landlord and Tenant, and their respective successors, assigns, patrons, tenants, invitees and all other persons having business with any of them; and

RESERVING UNTO LANDLORD, subject to the remaining provisions of this Lease, the following:

- (iv) the permanent and perpetual non-exclusive right of ingress, egress and passageway in, over, through the Land which shall be necessary or desirable for entrance, exit and passageway of persons and property, including vehicles, to and from the Terminal, Station and the System;
- (v) all subsurface rights under the sidewalks, streets, avenues, curbs and roadways fronting on and abutting the Land subject to Tenant's rights described in subparagraph (iii) of this definition;
- (vi) the permanent and perpetual non-exclusive right to use the space located in the Public Areas on the Land solely for the purpose of ingress and egress of passengers using the Terminal, Station and System of Landlord, as well as the transportation of baggage, mail, supplies and materials of such passengers, from the Demised Premises, public thoroughfares and the Station; and
- (vii) the permanent and perpetual non-exclusive right to use and occupy space located in the Public Areas on the Land to be occupied by the Terminal and

Station signs approved by Tenant as to location, size, and consistency pursuant to the terms of this Lease.

IT BEING UNDERSTOOD between the parties hereto that no portion of the Terminal, Station and/or System is leased or intended to be leased to Tenant and that all portions or areas of the Terminal, Station and/or System are expressly EXCEPTED AND RESERVED unto Landlord, except to the extent that parts thereof are leased or rights in respect thereof are granted to Tenant as herein provided.

- (s) Development Period shall mean the period of time beginning on the Initial Commencement Date and ending on the One Time Rent Payment Date.
- (t) Development Period Rent shall mean an annual amount equal to \$100,000 per year, payable in monthly installments of \$8,333.33 each during the Development Period.
- (u) Early Termination Rent Refund shall mean a prorata portion of the One Time Rent attributed to the period from the date of termination of this Lease or other specified event until the end of the scheduled 90 year initial term of this Lease (prorated on a straight line basis over the entire initial term of this Lease).
- (v) Event(s) of Default shall have the meaning ascribed to such term in Article 19 herein.
- (w) Fair Market Value shall be that sum which, considering all of the circumstances would be arrived at by good faith, fair, arm's-length negotiations between an owner willing to sell and an independent third party purchaser willing to buy, neither being under any pressure.
- (x) FDOT shall be given the meaning ascribed to such term in Section 1.3 herein.
- (y) Final Design Plans shall mean the final plans and specifications for the Phase I Improvements or other Improvements, as applicable.

- (z) FTA shall have the meaning ascribed to such term in Section 1.3 herein.
- (aa) Ground Floor Retail Space shall mean the portion of the Demised Premises that is located at ground level, along Biscayne Boulevard, adjacent to the Omni Bus Terminal, intended for retail lease to Space Lessees or Sublessees and is estimated to contain approximately 5,000 rentable square feet of space.
- (bb) Gross Revenue shall have the meaning ascribed to such term in Section 3.4.
- (cc) Impositions shall mean all ad valorem taxes, special assessments, sales taxes and other governmental charges and assessments levied or assessed with respect to the Demised Premises and the activities conducted thereon or therein, except for such taxes, assessments and charges as they relate to the Land or improvements of Landlord located on the Demised Premises which shall be the responsibility of Landlord or those taxes collected and paid by Sublessees.
- (dd) Improvements shall mean the Buildings, parking areas, parking garages, above and below surface improvements, utilities, utility lines and appurtenant equipment, vaults infrastructure and other improvements to be erected on, above or below the Demised Premises or a portion thereof in accordance with Article 4 below, and all equipment, furniture, and fixtures located or to be located therein which are owned by Tenant, including any replacements, additions and substitutes thereof as part of the Project on the Demised Premises.
- (ee) Initial Commencement Date shall mean the date on which three duplicate originals of this Lease, fully signed by Landlord, have been delivered to Tenant.
- (ff) Interim Bus Terminal means the temporary bus terminal to be constructed by Tenant on the Interim Bus Terminal Site described in Schedule 1.7 in accordance with the

Interim Bus Terminal Specifications described in Schedule 1.5 and the Interim Bus Terminal Lease attached in Schedule 1.6 to replace the existing bus terminal on the Land until Completion of Phase I Construction.

- (gg) Interim Bus Terminal Lease means the lease of the property described in Schedule 1.7 by Tenant (as landlord) to Landlord (as tenant) on the terms described in Schedule 1.6.
- (hh) Land, if applicable, shall mean the real property described in Schedule 1.1 hereto. Upon completion of the Closure of 14th Terrace, the Land shall automatically be expanded to include Closed 14th Terrace.
- (ii) Landlord shall mean, on the Initial Commencement Date, Miami-Dade County, a political subdivision of the State of Florida, through Miami-Dade Transportation and Public Works Department. Thereafter, "Landlord" shall mean the owner at the time in question of Landlord's interest in the Demised Premises.
- (jj) Law and Ordinance or Laws or Ordinances shall mean all present and future applicable laws, ordinances, rules, regulations, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, or any other governmental body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Demised Premises.
- (kk) Lease shall mean this Lease and all amendments, supplements, addenda or the renewal thereof.
- (ll) Leasehold Mortgage shall mean a mortgage or mortgages or other similar security agreements given to any Leasehold Mortgagee encumbering the interest of Tenant in all or any portion of the Demised Premises, in any Severance Lease, or in any

Sublease, and shall be deemed to include any mortgage or trust indenture under which this Lease shall have been encumbered.

- (mm) Leasehold Mortgagee shall mean a recognized lending institution described in Section 1.4(b) meeting the requirements specified in Section 17.2 that is or becomes the holder, mortgagee or beneficiary under a Leasehold Mortgage and the successors or assigns of such holder, mortgagee or beneficiary, and shall be deemed to include the trustee under any such trust indenture and the successors or assigns of such trust.
- (nn) Lease Year shall mean each separate and consecutive period of twelve (12) full calendar months beginning upon the first day of the first month following the Participation Rent Commencement Date and upon each anniversary of such date thereafter provided that Landlord may cause the Lease Year to be a calendar year.
- (oo) Lender shall mean any Leasehold Mortgagee.
- (pp) MDT shall have the meaning set forth in the Preamble of this Agreement.
- (qq) One Time Rent shall mean a one-time payment of rent in the amount of \$10,000,000 payable on the One Time Rent Payment Date.
- (rr) One Time Rent Payment Date shall mean the last day of the 48th month following the Initial Commencement Date.
- (ss) Participation Rent shall have the meaning ascribed to such term in Article 3 herein.
- (tt) Participation Rent Commencement Date shall mean the later of (i) Completion of Phase I Construction and (ii) the approval by the City of Miami of Tenant's development plans for the Project.
- (uu) Parties shall mean Landlord and Tenant.

- (vv) Permit shall mean any permit issued or to be issued by the appropriate agency or person, including but not limited to applicable permits for construction, demolition, installation, foundation, dredging, filling, the alteration or repair or installation of sanitary plumbing, water supply, gas supply, electrical wiring or equipment, elevator or hoist, HVAC, sidewalk, curbs, gutters, drainage structures, lift stations, paving, grease traps, subdivision plat and/or waiver of plat approvals, covenant or unity of title acceptance or the release of existing unities or covenants or agreements in lieu thereof, building permits, certificates of use and/or occupancy, stormwater, development of regional impact approvals, modifications or exemptions, and the like and any other official action of the City of Miami, Miami-Dade County, State of Florida, MDT, FDOT, FTA or any other government agency having jurisdiction related to the Project.
- (ww) Phase I Improvements shall mean the improvements to the Land described in Schedule 1.3.
- (xx) Plans and Specifications shall mean the plans and specifications for all work intended to be performed in connection with the Improvements and with the alteration, construction and reconstruction of the Project required to be done or performed hereunder and shall include any changes, additions or modifications thereof, provided the same are approved as provided herein.
- (yy) Preliminary Plans shall mean plans for the Demised Premises or a portion thereof, as the case may be, which have been submitted by Tenant to Landlord.
- (zz) Project shall mean the development on the Land contemplated by the response by Tenant, to the Request for Proposals for the Development of the Omni Bus Terminal and Adrienne Arsht Center Metromover Station, RFP No. 00152, as such proposed

development may be amended and/or revised from time to time ("Proposal") (except that any material amendment to the Project as it may expressly affect the Land, shall require the consent of the parties) specifically as it pertains to the construction on the Land, including, but not limited to the development and integration of the Improvements contemplated hereunder.

- (aaa) Proposal shall have the meaning ascribed to such term in the preceding definition.
- (bbb) Public Areas shall mean those areas of the Demised Premises both enclosed and unenclosed, generally available and open to the public during normal business hours, but shall not include common areas in the residential, hotel, office or the commercial components located on the Land or the Air Rights.
- (ccc) Rent shall mean collectively, the One Time Rent, the Development Period Rent and the Participation Rent.
- (ddd) Settlement Monitoring Plan shall have the meaning ascribed to such term in Section 1.4.
- (eee) Severance Lease shall mean a lease of a portion of the Demised Premises to an Affiliate of Tenant or to any transfer of a portion of this Lease or the Demised Premises made in accordance with Section 17.1. The provisions of a Severance Lease shall be substantially the same as contained in this Lease limited to the portion of the Demised Premises described in such lease.
- (fff) Space Lease shall mean a lease (other than this Lease), license or other agreement between Tenant and a third party for the use or occupancy of space on or within the Demised Premises.

- (ggg) Space Lessee shall mean a tenant, lessee, or licensee, or their successors or assigns, under a Space Lease.
- (hhh) Station shall mean the Adrienne Arsht Center Metromover Station portion of the System.
- (iii) Station Easement Agreement shall mean that certain Easement, Operation and Maintenance Agreement dated _____, 2016 between Landlord and Tenant providing for certain renovations, maintenance and repairs by Landlord and Tenant to the Station and easements for the benefit of Tenant in connection therewith.
- (jjj) Sublease shall mean any instrument pursuant to which the right to possession of all or a major portion of the Demised Premises is transferred to an entity other than Tenant and whereby the Tenant retains all obligations under this Lease.
- (kkk) Sublessee shall mean the entity to which a Sublease is granted or its successors or assigns under any such Sublease.
- (lll) System shall mean the Miami-Dade County Transit System including, without limitation, all trains, buses, fixed guideways, stations, parking lots and parking structures, drop off/pickup areas, bus stops and shelters, bus bays, streets and sidewalks, maintenance facilities, structures and all associated facilities required in the operation of the System.
- (mmm) Taking shall mean the exercise of the power of eminent domain as described in Article 18.
- (nnn) Temporary Certificate of Occupancy shall mean the temporary certificate issued by the person or agency authorized to issue a temporary certificate of occupancy or temporary certificate of completion, as applicable, evidencing that the applicable Improvement(s),

as applicable, is (are) ready for occupancy in accordance with applicable Law or Ordinance.

(ooo) Tenant shall mean, on the Initial Commencement Date, RESORTS WORLD MIAMI LLC, a Delaware limited liability company. Thereafter, "Tenant" shall mean the owner(s) at the time in question of Tenant's interest under this Lease or, if all or a portion of the Demised Premises is subject to a Declaration, then "Tenant" shall include any Association under such Declaration. If Tenant, or any successor to its interest hereunder, ceases to have any interest in the leasehold estate hereby created, whether by reason of assignment, transfer or sale of Tenant's interest hereunder, the assignor, transferor or seller shall, subject to the provisions of Section 17.1, be released from and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed after the date of such assignment, transfer or sale. Nothing herein shall be construed to relieve Tenant from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Tenant's interest hereunder. Notwithstanding the foregoing, original Tenant shall remain liable for the representations and warranties of Section 24.2.

(ppp) Terminal shall mean the Omni Bus Terminal.

(qqq) Unavoidable Delays are delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; acts of God; floods; fires; hurricanes; any act, neglect or failure to perform of or by Landlord; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Lease or the procedures leading

to its execution; moratoriums; or any release, discharge or presence of hazardous substances or other environmental contamination or hazard. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Lease where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Failure to notify a party of the existence of Unavoidable Delays within the fifteen (15) days of its discovery by a party shall not void the Unavoidable Delays, but the time period between the expiration of the fifteen (15) days period and the date actual notice of the Unavoidable Delays is given shall not be credited to the obligated party in determining the anticipated time extension.

ARTICLE 3

Rent and Development

Section 3.1 One Time Rent and Development Period Rent.

- (a) On the One Time Rent Payment Date, Tenant shall pay the One Time Rent as rent for the entire term of this Lease, including the renewal.
- (b) During the Development Period, Tenant shall pay the Development Period Rent. The Development Period Rent shall be payable monthly in advance, without notice or

billing, on or before the 5th day of each month from and after the Initial Commencement Date in an amount equal to 1/12 of the annual Development Period Rent. After the expiration of the Development Period, Tenant shall have no further obligation to pay Development Period Rent.

Section 3.2 Participation Rent.

Participation Rent shall be the greater of (a) \$300,000 per Lease Year, or (b) Fifty Percent (50%) of Gross Revenue generated by the Ground Floor Retail Space. Participation Rent shall be prorated for any partial Lease Year.

Section 3.3 Payment of Participation Rent.

- (a) Seventy-Five Thousand Dollars (\$75,000) shall be paid on the fifth (5th) day of each calendar quarter (January, April, July and October for each Lease Year Participation Rent is due commencing on the Participation Rent Commencement Date.
- (b) Following the end of each Lease Year, the amount of Participation Rent actually paid during each Lease Year shall be compared to the amount of Participation Rent due for that Lease Year. If the amount of Participation Rent due is greater than what was paid, Tenant shall pay the difference within one hundred and twenty (120) days after the end of the Lease Year. If the amount of Participation Rent due is less than what was paid, Landlord will credit the difference to the first accruing Participation Rent due for the following Lease Year. Tenant shall prepare and submit to Landlord a separate statement of Gross Revenue for the Ground Floor Retail Space for each Lease Year, which shall be in compliance with Generally Accepted Accounting Principles ("GAAP") and with the provisions of this Lease and certified as being prepared in

accordance with GAAP by a reputable, independent certified public accountant selected by Tenant. Participation Rent shall be paid to Landlord.

Section 3.4 Gross Revenue.

“Gross Revenue” shall mean all monies generated or derived and received, directly or indirectly, by the Tenant as a result of the Ground Floor Retail Space. Gross Revenue shall include, but not be limited to, (a) monies received for the occupancy of space within the Ground Floor Retail Space, (b) any monies realized in lieu of rents pursuant to claims asserted under any business interruption insurance, rental insurance proceeds, or excess property insurance as described in Article 16 pertaining to the Ground Floor Retail Space, (c) monies received as a result of granting certain rights to a third party including granting the right to install and/or use equipment in or on any part of the Ground Floor Retail Space, such as advertising or directional signage and antennae, (d) monies received by the Tenant for the purpose of providing amenities, insurance coverage, security services, maintenance of common areas, equipment and facilities and replacement, betterments and/or additions to the Ground Floor Retail Space, equipment and facilities located on the Ground Floor Retail Space and all reimbursements for such services, amenities and fees paid to the Tenant on behalf of its sublessees, space lessees, subtenants or any other entity occupying the Ground Floor Retail Space and any and all other expenses pertaining to the Ground Floor Retail Space that may be construed to be pass-through expenses; i.e., expenses for goods and services provided to subtenants, space tenants or sublessees occupying the Ground Floor Retail Space.

Only the following may be excluded from Gross Revenue:

- (a) Security deposits (but interest earned by Tenant on security deposits pertaining to the Ground Floor Retail Space to the extent not required to be paid to others shall be included in Gross Revenue);

- (b) Payments made to Tenant by an insurer or by a Space Lessee or Sublessee pertaining to the Ground Floor Retail Space for casualty losses or damages sustained to the Ground Floor Retail Space (to the extent such payments are used by Tenant to repair or restore the Ground Floor Retail Space);
- (c) Taxes or other charges collected by Tenant and payable to governmental agencies.

Section 3.5 Landlord's Right to Verify and Audit Information Submitted.

Landlord may, during normal business hours and upon ten (10) business days written notice to Tenant, inspect, take extracts from and make copies of Tenant's books and records pertaining to the Ground Floor Retail Space for the purpose of verifying any statement submitted to Landlord as required by this Lease. Landlord may, at its option and at its sole expense, conduct or cause to be conducted an audit to verify the Gross Revenue received by Tenant from the operation of the Ground Floor Retail Space for any Lease Year or to verify any Participation Rent under this Lease. If Landlord's audit shall disclose that an amount is due to Landlord in excess of the amount Tenant had previously or should have paid to Landlord for such Lease Year, then such amount, together with any late charge required by Section 3.6, shall be paid by Tenant within ten (10) business days after receipt by Tenant of a written notice from Landlord setting forth the amount due and the calculations used in making the determination. If the amount due Landlord under the preceding sentence (excluding any late charge) exceeds the amount Tenant had previously or should have paid to Landlord for such Lease Year by five percent (5%) or more, the cost of such audit shall be at Tenant's expense. If Landlord's audit shall disclose that Landlord has been overpaid for such Lease Year, Landlord shall credit such overpayment to the next payment or payments required to be paid by Tenant under the terms of this Lease. Tenant's books and records regarding the Ground Floor Retail Space shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in writing. Landlord's right to audit shall

continue for a period of three (3) years after receipt of any statement or report by Landlord.

Section 3.6 Late Payments.

In the event that any payment of Rent or any other amount due Landlord shall remain unpaid for a period of twenty (20) days beyond their due date, a late charge of five percent (5%) of the amount of such payment shall be added to such delinquent payment. In addition to the rights and remedies provided for herein, Landlord shall also have all rights and remedies afforded by law for enforcement and collection of rent and any late charges which are not inconsistent with the limitations or remedies contained in this Lease. All rent and other payments due Landlord under this Lease shall be paid to Landlord at the address specified herein for notice to Landlord.

Section 3.7 Discontinued Use of Station or System.

Landlord covenants and agrees with Tenant that Landlord will not discontinue, substantially curtail, or cease the operation of the Station or the System during the Term of this Lease. In the event Landlord, directly or indirectly, determines to discontinue, substantially curtail, or cease the operation of the Station or the System, which under the terms of this Lease and otherwise it has agreed to operate, in addition to any other rights Tenant has hereunder, (a) Tenant shall have the right to terminate this Lease and its obligations hereunder by giving written notice to the County within six (6) months after such discontinuance, substantial curtailment or cessation, and any obligations of Tenant shall cease and abate as of the date of the giving of such notice (including, without limitation, any obligations for Rent not then paid), and in such event, this Lease shall terminate on the date set forth in such notice, or if no such date is provided, then on the fifteenth (15th) day following Landlord's receipt of notice of termination, and if Rent was previously paid to Landlord, within sixty (60) days of such termination Landlord shall refund to Tenant the Early Termination Rent Refund; (b) in the event Tenant does not terminate this Lease as set forth above, Tenant shall have the right after a discontinuance, curtailment,

or cessation of the Station and/or System, that is continuous for ninety (90) consecutive days, excluding any Unavoidable Delays, to cease its obligations to maintain the Improvements as required hereunder.

Section 3.8 Approved Restriction Adjustments.

Tenant acknowledges that it has performed reasonable due diligence regarding development of the Demised Premises and that, based upon that due diligence, has proposed to develop the Project in substantially the form described in this Lease. Landlord and Tenant acknowledge that the Rent established in this Lease is based on the understanding that Tenant would be able to develop the Project as described. In the event, due to Laws and Ordinances and/or Unavoidable Delays, Tenant is not able to build the Project as originally described in the Proposal or Tenant cannot obtain its Permits, then in addition to any other rights Tenant has hereunder, (a) Tenant shall have the right to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after such inability becomes known to Tenant. In such event, Tenant shall restore the Demised Premises to its condition prior to the commencement of Tenant's on-site physical due diligence, this Lease shall terminate on the date set forth in such notice, or if no date is provided, then on the fifteenth (15th) day following Landlord's receipt of notice of termination, Tenant's obligation for any Rent not then paid shall terminate as of such date and if Rent was previously paid to Landlord, within sixty (60) days of such termination, Landlord shall refund to Tenant the Early Termination Rent Refund less any actual out-of-pocket costs incurred by Landlord in reviewing any plans, drawings and calculations submitted by Tenant; and (b) in the event Tenant does not terminate this Lease, as set forth above, Tenant shall become entitled to an adjustment in Rent on an equitable basis taking into consideration the amount and character of the Building space or other aspect of the Project described in this Lease, the use of which will be denied to the Tenant, as compared with the Building space described in this

Lease, and if at the time of such adjustment Tenant has previously paid the Rent (or portion thereof), the amount of such adjustment shall be refunded by Landlord to Tenant within sixty (60) days following the date of such adjustment. If Landlord and Tenant cannot agree upon the foregoing adjustment of Rent within 90 days after Tenant has the right to give notice of its election to terminate the Lease (but chooses not to), then Tenant shall be permitted to terminate this Lease and the provisions of Section 3.8(a) shall apply regarding the payment of the Early Termination Rent Refund to Tenant. However, in no event, shall such adjustments in the proposed development delay the Commencement of Construction for a period of longer than 120 calendar days, unless an extension of such period of time is granted in writing by the County, in its sole discretion.

Section 3.9 Payment If Right to Develop Demised Premises is Sold, Assigned or Transferred.

In the event Tenant sells, assigns or transfers the right under this Lease to develop any undeveloped portion of the Project, in contrast to an already developed portion, prior to the Completion of the Phase I Improvements and as a result thereof Tenant retains less than a 25% interest in such portion of the Project, then in such event, Tenant shall pay Landlord 5% of whatever monies Tenant receives for such sale, assignment or transfer, less a proportionate share of the hard costs expended by Tenant for infrastructure actually placed in the ground to the extent such infrastructure actually benefitted such portion. Tenant shall pay Landlord's share of any monies Tenant receives within thirty (30) calendar days of Tenant's receipt of same. The payments to Landlord under this section shall be in addition to and with no offsets for any other rents or payments to which Landlord is entitled under any other provisions of this Lease.

ARTICLE 4
Development of Land and Construction of Buildings

Section 4.1 Land Uses.

- (a) Tenant and Landlord agree, for themselves and their successors and assigns, to devote the Demised Premises to the uses specified in this Lease.
- (b) The parties recognize and acknowledge that the manner in which the Demised Premises and Buildings are developed, used and operated are matters of critical importance to Landlord and to the general welfare of the community. Tenant agrees that at all times during the term of this Lease, Tenant will use reasonable efforts to create a development on the Demised Premises which (i) enhances the ridership and usage of the System, (ii) creates strong access links between the Demised Premises and the System, and (iii) creates a (type of project) with a quality of character and operation consistent with that of similar, comparable projects of this nature planned or under construction in the general vicinity of the Demised Premises.
- (c) Tenant shall establish such reasonable rules and regulations governing the use and operation by Space Lessees of their premises as Tenant shall deem necessary or desirable in order to assure the level or quality and character of operation of the Demised Premises required herein; and Tenant shall use reasonable efforts to enforce such rules and regulations.

Section 4.2 Development Rights and Construction Phases.

Tenant shall have the right to develop the Demised Premises and to construct the Buildings required in connection with such development, subject to the terms and conditions of this Lease and to the densities and uses described in subsections (a) or (b) below:

- (a) Development of Air Rights. In connection with this contemplated development, the Parties agree Landlord will join in such easements, restrictive covenants, easement vacations or modifications and such other documents, including but not limited to non-

disturbance and attornment agreements as provided in this Agreement, as may be necessary for Tenant to develop and use the Demised Premises in accordance with the Preliminary Plans and/or Proposal and in a manner otherwise permitted hereunder, provided that

- (i) such joinder by Landlord shall be at no cost to Landlord other than its costs of review;
 - (ii) the location, terms, and form of any such easements or other documents shall be reasonably acceptable to Landlord, which acceptance shall not be unreasonably withheld or delayed; and
 - (iii) Landlord agrees to use best efforts to review and approve (or disapprove with an explanation for such disapproval) any such requests within ten (10) business days of such request from Tenant (the "Administrative Review Period") or a reasonably longer period of time if the volume and complexity of the documents warrant a longer review period (except in the event that Board approval is required under applicable Laws and Ordinances for such approval, in which case Section 23.21 shall prevail). Tenant agrees to provide Landlord with all documents necessary to assess such requests at the earliest possible time and Landlord agrees to expedite the review of such documents and its response to such requests.
- (b) Miami-Dade County's Rights As Sovereign. It is expressly understood that notwithstanding any provision of this Lease and Miami-Dade County's status as Landlord thereunder:

- (i) Miami-Dade County retains all of its sovereign prerogatives and rights as a county under Florida laws (but not in regard to its status as Landlord and the performance of its contractual duties hereunder) and shall in no way be estopped from withholding or refusing to issue any approvals of applications for building or zoning; from exercising its planning or regulatory duties and authority; and from requiring development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and improvements provided for in this Lease; and
- (ii) Miami-Dade County shall not by virtue of this Lease be obligated to grant Tenant, the Demised Premises or the Project any approvals of applications for building, zoning, planning or development under present or future Laws and Ordinances of whatever nature applicable to the design, construction and development of the Buildings and other Project improvements provided for in this Lease but shall apply the same standards to the Project as are applied to unrelated projects.
- (c) Submission of Demised Premises to Declaration. If requested by Tenant, Landlord agrees to join in and consent to any Declaration provided same is not inconsistent with the terms and conditions of this Lease.

Section 4.3 Conformity of Plans.

Preliminary Plans and Construction Plans and all work by Tenant with respect to the Demised Premises and to Tenant's construction of Buildings thereon shall be in conformity with this Lease, applicable building codes, and all other applicable federal, state, county and local laws and regulations,

including applicable provisions of the Miami-Dade Transportation and Public Works Department Adjacent Construction Safety Manual or its replacement. It should be noted that the Miami-Dade Transportation and Public Works Department Adjacent Construction Safety Manual contains minimum requirements and the County may impose more stringent requirements if the County reasonably determines that more stringent requirements are warranted to adequately protect the System and its operation.

Section 4.4 Design Plans; MDT Review and Approval Process.

- (a) Tenant shall submit design and construction documents for the Phase I Improvements or other Improvements, as applicable, to MDT for review, coordination and approval. For each submittal, Tenant shall submit three (3) full-sized or half-sized sets of prints and an electronic copy with the date clearly noted on each copy.
- (b) At 15% of the overall design completion of the Phase I Improvements or other Improvements, as applicable, Tenant shall submit conceptual site layouts and plans, sections, and elevations to MDT for review in conformity with applicable building codes, federal, state, county and local laws and regulations, including any applicable provisions of the Miami Metromover Omni Extension, Basis for Design, dated December 1989.
- (c) At 50% design completion of the Phase I Improvements or other Improvements, as applicable, Tenant shall submit drawings, conceptual site layouts and plans, sections, elevations and pertinent documentation to MDT for review.
- (d) At 100% design completion of the Phase I Improvements or other Improvements, as applicable, Tenant shall submit to MDT the Final Design Plans. MDT shall review these plans to ensure that all previous MDT comments to which the parties have

agreed have been incorporated therein. However, Tenant may request reconsideration of any comments made by MDT.

- (e) Upon receipt of each of the above-mentioned submittals, MDT shall review same and shall, within thirty (30) days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Tenant shall, within thirty (30) days after the date Tenant receives such disapproval, make those changes necessary to meet MDT's stated grounds for disapproval or request reconsideration of such comments. Within thirty (30) days of MDT's response to such request for reconsideration, Tenant shall, if necessary, resubmit such altered plans to MDT. Any resubmission shall be subject to review and approval by MDT, within thirty (30) days from receipt by MDT, accordance with the procedure hereinabove provided for an original submission, until the same shall receive final approval by MDT. MDT and Tenant shall in good faith attempt to resolve any disputes concerning the Plans in an expeditious manner.
- (f) Upon the approval of the Final Design Plans for the Phase I Improvements or other Improvements, as applicable, such design shall be the construction plan for the Project. MDT's approval shall be in writing and each party shall have a set of plans signed by all Parties as approved. In the event any change occurs after approval of the Final Design Plan, then Tenant must resubmit the changed portion of the construction plans for MDT's reasonable approval (unless the change is required by another Miami-Dade County department as part of the permitting process).
- (g) Any contrary provisions in this Lease notwithstanding, the approval of MDT (Miami-Dade Transportation and Public Works Department) as a department of Miami-Dade

County of the above mentioned submittals, any submittals pursuant to Section 1.4 or any other Preliminary Plans or Construction Plans shall constitute approval on behalf of the Landlord and all other departments of the County for the approval of any of same.

Section 4.5 Construction Plans.

Tenant shall give Landlord final site and elevation plans prior to submittal for the building permits. All Construction Plans for the Phase I Improvements or other Improvements, as applicable, must be in conformity with the Final Design Plans approved by MDT and the procedure described above in this Lease.

Section 4.6 "As-Built" Plans.

At the completion of the entire Project, Tenant shall provide to Landlord eight (8) full-sized or half-sized sets and an electronic copy of "as-built" construction plans for any portions of the Improvements constructed under this Lease that impact any portion of the System as defined herein.

Section 4.7 Tenant Obligations.

MDT approval of any concept plans pursuant to this Article 4 and Section 1.4 shall not relieve Tenant of its obligations under law to file such plans with any department of the County, the City of Miami, or any other governmental authority having jurisdiction over the issuance of building or other Permits and to take such steps as are necessary to obtain issuance of such Permits. Landlord agrees to cooperate with Tenant in connection with the obtaining of such approvals and Permits. Tenant acknowledges that any approval given by MDT, as Landlord pursuant to this Article 4, shall not constitute an opinion or agreement by MDT that the plans are structurally sufficient or in compliance with any Laws or Ordinances, codes or other applicable regulations, and no such approval shall impose any liability upon MDT. Tenant shall include a provision in each Leasehold Mortgage which

will vest MDT with all right, title and interest in the Construction Plans and specifications financed thereby, should an Event of Default occur, and the affected Leasehold Mortgagee does not elect to construct and complete the Buildings. It should be noted that the County retains jurisdiction for building approvals, including issuance of building permits, building inspections and issuance of certificates of occupancy within the any portion of the Miami-Dade County Transit System in accordance with Florida Statutes 125.011 and 125.015.

Section 4.8 Construction Costs.

Landlord shall not be responsible for any costs or expenses of initial construction of the Buildings and improvements, except as otherwise provided herein or agreed to by the parties.

Section 4.9 Progress of Construction.

Subsequent to the delivery of possession of the Demised Premises to Tenant, Tenant shall submit bi-monthly written schedules to the County Mayor, or designee, of the progress of Tenant with respect to development and construction of the Project. The County Mayor, or designee, shall create bi-monthly written reports from such schedules and submit the written reports to MDT.

Section 4.10 Site Conditions.

Tenant, by executing this Agreement, represents it has visited the site, is familiar with local conditions under which the construction and development is to be performed, will perform all test borings and subsurface engineering generally required at the site under sound and prudent engineering practices, and is reasonably requested by Landlord, and will correlate the results of the test borings and subsurface engineering and other available studies and its observations with the requirements of the construction and development of the Buildings. Tenant shall restore the site to a condition substantially similar to its pre-testing condition after all testing, and shall provide Landlord with a copy of all test results. Landlord makes no warranty as to soil and subsurface conditions. Tenant shall

not be entitled to any adjustment of Rent or of any applicable time frame or deadline under this Lease in the event of any abnormal subsurface conditions unless the subsurface conditions are so unusual that they could not have reasonably been anticipated, and in such event, time periods for payment of Rent shall be extended by the reasonable time necessary to accommodate redesign and lengthened construction schedules resulting from that event.

Section 4.11 Ownership of Improvements.

All Buildings and Improvements and all material and equipment provided by Tenant or on its behalf which are incorporated into or become a part of the Project (excepting all of the System facilities) shall, upon being added thereto or incorporated therein, and the Project itself, be and remain the property of Tenant, unless otherwise specifically excepted in this Lease, but subject to the same (not including personal property of Tenant, Sublessees or Space Lessees) becoming the property of Landlord at the expiration or termination of this Lease, as extended by a renewal term, if applicable. Landlord agrees that all or a portion of the Demised Premises may be submitted to a Declaration and may, as a result of such submission, be subdivided into condominium units or parcels to be conveyed to individual owners. The Declaration or other condominium documents shall require the Association to provide Landlord, upon Landlord's request, with a list of the names and contact information of the then-current owners of the condominium units contained within the Declaration.

Section 4.12 Mutual Covenants of Non-Interference.

Tenant's development and construction of the Project and its use and operation of the Demised Premises shall not unreasonably interfere with Landlord's customary and reasonable operation of the System, unless prior arrangements have been made in writing between Landlord and Tenant. Similarly, Landlord's use of the Terminal and Station area shall not materially and or adversely interfere with Tenant's development and construction of the Project and its use and operation of the

Demised Premises and the Buildings and Improvements to be constructed thereon, unless prior arrangements have been made in writing between Landlord and Tenant. Landlord may at any time during the term of this Lease, stop or slow down construction by Tenant, but only upon Landlord's reasonable determination that the safety of the System, or of the users of the System or of any employees, agents, licensees and permittees of Landlord is jeopardized. Any such slowdown or stoppage shall be deemed to be an Unavoidable Delay and shall entitle Tenant to appropriate extensions of time hereunder (including, without limitation, time frames pertaining to payment of Rent), provided that such safety hazard which caused the slowdown or stoppage is not the result of Tenant's negligence or willful act.

Section 4.13 Connection of Buildings to Utilities.

Tenant, at its sole cost and expense, shall install or cause to be installed all necessary connections between the Buildings constructed or erected by it on the Demised Premises, and the water, sanitary and storm drain mains and mechanical and electrical conduits and other utilities, whether or not owned by Landlord. Tenant shall pay for the additional cost, if any, of locating and installing new facilities for sewer, water, electrical, and other utilities as needed to service the Demised Premises and for any extension, relocation and/or upgrading of utilities including utilities serving County facilities. To the extent that Tenant needs Landlord to join in any agreements or documents or provide any approvals for installation of any connections necessary for the Project or required by Tenant, Landlord agrees to execute such agreements or documents or provide such approvals within fourteen (14) days of receipt of Tenant's request.

Tenant's obligations hereunder shall be subject to Landlord's express obligation hereunder to disclose in writing (and accompanied by plats, surveys, legal descriptions or sketches of surveys to the extent

available and known) the location of all recorded or unrecorded easements or licenses affecting the Demised Premises, which disclosure shall be made no later than the date of execution of the Lease.

Section 4.14 Connection Rights.

Landlord hereby grants to Tenant, commencing with the execution of this Lease and continuing during the term thereof, the non-exclusive right to construct utility connections to the Demised Premises without further approval from Landlord, subject to the right of Landlord to construct above or below grade connections between the Station and any land or facilities, excluding the Project, owned or operated by Landlord or another governmental agency or entity.

Section 4.15 Damages and/or Service Interruptions.

If, at any time, activities undertaken by or on behalf of Tenant or authorized by Tenant, cause any damage to County property or facilities or cause disruption or interruption to normal County operations, including Metrobus and Metromover operations, Tenant agrees to pay all actual and reasonable costs incurred by the County to repair such damage and to mitigate such impacts to operations, including providing replacement and/or alternative services as a result of such service disruptions or interruptions.

Additionally, the County shall have the right to require the implementation of safety measures if it determines in its sole discretion, that, as a result of activities undertaken by or on behalf of Tenant or authorized by Tenant, such safety measures are necessary to safeguard County property, facilities, operations, employees, patrons and/or the general public and Tenant shall pay all reasonable and actual costs incurred in the implementation of such safety measures.

For example, if cranes are used during construction and the County determines that the operation of the cranes may cause damage to County facilities or endanger employees and/or patrons, it may

require the use of "spotters" to coordinate crane activities and Tenant shall pay all actual and reasonable costs incurred by the County in providing "spotters".

The County will notify Tenant of all such costs incurred and provide an accounting of those costs. Tenant shall pay all such costs within forty-five (45) days of notification by County. Such payments shall be subject to the provisions of Section 3.6, Late Payments, and the provisions of Section 23.13, Protest Payments.

Section 4.16 Art in Public Places.

This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-Dade County Procedures Manual (see <http://www.miamidadepublicart.org/#tools>).

Section 4.17 Off-site Improvements.

Any off-site improvements required to be paid or contributed as a result of the development of the System shall be paid or contributed by Landlord. Any off-site improvements required to be paid or contributed as a result of Tenant's development of the Demised Premises shall be paid or contributed by Tenant.

Section 4.18 Signage and Landscaping of Entrances.

Landlord agrees to cooperate with Tenant in the development of plans regarding entrances to the Demised Premises in order to achieve an aesthetic blend of landscaping and signage. All costs of developing such plans shall be paid by Tenant.

Section 4.19 Designation of Landlord's Representative.

The County Mayor, or designee, shall have the power, authority and right, on behalf of Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the County

Commission, to:

- (a) review and approve documents, plans, applications, lease assignments, subordination and nondisturbance agreements and requests required or allowed by Tenant to be submitted to Landlord pursuant to this Article and this Lease;
- (b) consent to actions, events, and undertakings by Tenant for which consent is required by Landlord and execute documents in connection with the development process, including, without limitation, street closures and plats;
- (c) make appointments of individuals or entities required to be appointed or designated by Landlord in this Lease;
- (d) execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;
- (e) execute on behalf of Miami-Dade County any and all consents, agreements, easements, applications or other documents, needed to comply with applicable regulatory procedures or this Lease and secure permits or other approvals needed to accomplish the construction of any and all improvements in and refurbishments of the Demised Premises;
- (f) execute and issue estoppel statements as provided elsewhere in this Lease.
- (g) review and approve (if required) documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to Landlord pursuant to this Article and this Lease;
- (h) consent to actions, events, and undertakings by Tenant for which consent is required by Landlord;

- (i) make appointments of individuals or entities required to be appointed or designated by Landlord in this Lease;
- (j) execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;
- (k) execute on behalf of Landlord any and all consents, agreements, applications or other documents, needed to comply with applicable regulatory procedures and secure Permits, other permits or other approvals needed to accomplish the construction of the Improvements for the Project, and
- (l) amend this Lease to correct any typographical or non-material errors.

Landlord agrees that within three (3) business days after the Initial Commencement Date to deliver written notice to Tenant designating the Mayor's designee.

Section 4.20 Additional Work.

Landlord and Tenant hereby acknowledge, that if both parties hereto agree, that Landlord may contract for certain work or services to be provided by Tenant, including but not limited to, construction and maintenance items. Such agreements shall be approved by both parties in writing and such work shall be at the cost of Landlord and, if the Parties hereto agree, may be paid in the form of rent credit.

Section 4.21 Landlord's Right to Verify and Audit Construction Information Submitted.

Landlord may, during normal business hours and upon ten (10) business days written notice to Tenant, inspect, take extracts from and make copies of Tenant's construction records pertaining to the construction of the Improvements for the purpose of verifying any statement submitted to Landlord as required by this Lease. Tenant's construction records regarding the construction of the Improvements shall be maintained in Miami-Dade County, Florida, or such other location approved by Landlord in

writing. Landlord's right to audit shall continue for a period of three (3) years after receipt of any statement or report by Landlord.

ARTICLE 5

Payment of Taxes, Assessments

Section 5.1 Tenant's Obligations for Impositions.

Tenant shall pay or cause to be paid, prior to their becoming delinquent, all Impositions, which at any time during the term of this Lease have been, or which may become a lien on, the Demised Premises or any part thereof, or any appurtenance thereto, provided, however, that:

- (a) If, by law, any Imposition (for which Tenant is liable hereunder) may, at the option of Landlord or Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same, including any accrued interest on the unpaid balance of such Imposition, in installments and, in such event, shall pay such installments as may become due during the term of this Lease (and provided further, that those installments which are to become due and payable after the expiration of the term of this Lease, but relating to a fiscal period fully included in the term of this Lease, shall be paid in full by Tenant); and
- (b) Any Imposition for which Tenant is liable hereunder relating to a fiscal period, a part of which period is included within the term of this Lease and a part of which is included in a period of time after the expiration of the term of this Lease, shall be adjusted between Landlord and Tenant as of the expiration of the term of this Lease so that Tenant shall pay only that portion of such Imposition which is applicable

to the period of time prior to expiration of the term of this Lease, and Landlord, if so obligated, shall pay the remainder thereof;

- (c) Any Imposition relating to the period prior to the Participation Rent Commencement Date shall be the sole responsibility and obligation of Landlord; and
- (d) Tenant shall have no obligation to pay any Impositions relating to the System or any facilities operated by Landlord.

Section 5.2 Contesting Impositions.

- (a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition, for which Tenant is or is claimed to be liable, by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition, unless such payment or payment thereof under protest would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of Section 5.1 herein, Tenant may postpone or defer payment of such Imposition if:
 - (i) Neither the Demised Premises nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost; and
 - (ii) Upon the termination of any such proceedings, Tenant shall pay the amount of such Imposition or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith.
- (b) Landlord shall not be required to join in any proceedings referred to in this Section 5.2 unless the provisions of any law, rule or regulation at the time in effect shall require

that Landlord is a necessary party to such proceedings, in which event Landlord shall participate in such proceedings at Tenant's cost.

ARTICLE 6

Surrender

Section 6.1 Surrender of Demised Premises.

Tenant, on the last day of the term of this Lease, as same may be extended by the renewal term provided in Section 1.2, or upon any earlier termination of this Lease, shall surrender and deliver up the Demised Premises to the possession and use of Landlord without delay and, subject to the provisions of Articles 16 and 19 herein, in good condition and repair, reasonable wear and tear, acts of God, and casualties excepted.

Section 6.2 Removal of Personal Property or Fixtures.

Where furnished by or at the expense of Tenant, an Association (if not the Tenant), a Sublessee, or any Space Lessee, or secured by a lien held by either the owner or a lender financing same, signs, furniture, furnishings, movable trade fixtures, business equipment and alterations and/or other similar items may be removed by Tenant, or, if approved by Tenant, by an Association (if not the Tenant), by a Sublessee, Space Lessee or lien holder at, or prior to, the termination or expiration of this Lease; provided however, that if the removal thereof will damage a Building or necessitate changes in or repairs to a Building, Tenant shall repair or restore (or cause to be repaired or restored) the Building to a condition substantially similar to its condition immediately preceding the removal of such furniture, furnishings, movable trade fixtures and business equipment, or pay or cause to be paid to Landlord the reasonable cost of repairing any damage arising from such removal.

Section 6.3 Subject to Rights of Association. Landlord acknowledges and agrees that in the event the Demised Premises is subject to a Declaration, Landlord's lien rights shall be subject to the rights of

the Association and individual condominium owners pursuant to Florida Statutes Chapter 718.401 or the Declaration.

Section 6.4 Rights to Personal Property After Termination or Surrender.

Any personal property of Tenant which shall remain in the Demised Premises after the fifteenth (15th) day following the termination or expiration of this Lease and the removal of Tenant from the Building, may, at the option of Landlord, be deemed to have been abandoned by Tenant and, unless any interest therein is claimed by a Leasehold Mortgagee or a lender or supplier financing the same, said personal property may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit.

Section 6.5 Survival.

The provisions of this Article 6 shall survive any termination or expiration of this Lease.

**ARTICLE 7
Insurance and Indemnification**

Landlord and Tenant hereby agree that the terms and provisions governing the insurance required pursuant to this Lease are contained in Schedule 7 hereto, which is hereby incorporated herein by reference.

Tenant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or resulting from the performance by Tenant or its employees, agents, servants, partners, principals, invitees or subcontractors of its obligations and responsibilities under this Lease including Tenant's construction of the Improvements. Tenant shall pay all claims and losses in connection therewith and

shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 8

Operation

Section 8.1 Control of Demised Premises; Maintenance.

Landlord hereby agrees that, subject to any express limitations imposed by the terms of this Lease, Tenant shall be free to perform and exercise its rights under this Lease and shall have exclusive control and authority to direct, operate, lease and manage the Demised Premises. Tenant is hereby granted the exclusive right to enter into any Sublease, Space Lease, license or similar grant for any part or all of the Improvements. During the Term and the construction of the Improvements, Tenant shall have the right to develop, direct and manage the development of the Improvements. Landlord covenants and agrees to use reasonable efforts to continuously operate the Terminal and the Station consistent with prudent business practices. After completion of construction of the Ground Floor Retail Space, Tenant covenants and agrees to use reasonable efforts to continuously operate the Ground Floor Retail Space consistent with prudent business practices in order for the Gross Revenue generated by the Ground Floor Retail Space to be reasonably comparable to that generated in similar facilities in Miami-Dade County which are subject to similar uses and restrictions. After completion of construction of the Improvements, Tenant shall throughout the term of this Lease continue to exercise day to day maintenance for the Improvements in accordance with prudent business practices.

Section 8.2 Non-Interference.

Landlord and Tenant hereby mutually agree not to materially or adversely interfere with the customary and reasonable free flow of pedestrian or vehicular traffic to and from the Public Areas and to and from the Station and Terminal. They further agree that, except for those structures reasonably necessary for security and safety purposes, no fence, or any other structure of any kind (except as may be specifically permitted or maintained under the provisions of this Lease, indicated on approved Construction Plans or otherwise mutually agreed upon in writing) shall be placed, kept, permitted or maintained in such fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from the Public Areas and to and from the Terminal and Station. The foregoing shall not prohibit Tenant from closing the Buildings and denying access to the public at such times and in such manner as deemed necessary by Tenant during the development or construction of any portion of the Buildings, the repair and maintenance of the Demised Premises or during the operation of the Demised Premises, provided such closing does not materially and adversely interfere with

- (a) the public's reasonable access to the Terminal or Station, or
- (b) Landlord's reasonable and customary operation of the Metrobus and Metromover Systems, unless prior arrangements have been made in writing between Landlord and Tenant.

Section 8.3 Repair and Relocation of Utilities.

Upon completion of construction of the Project, Landlord and Tenant hereby agree to maintain and repair, and each party is given the right to replace, relocate, and remove, as necessary, utility facilities within the Demised Premises required for the operation of the Demised Premises or of the System, provided:

- (a) Such activity does not materially or adversely interfere with the other party's operations;
- (b) All costs of such activities are promptly paid by the party causing such activity to be undertaken;
- (c) Each of the utility facilities and the Demised Premises are thereafter restored to their former state; and
- (d) Each party complies with the provisions of all Permits and licenses which have been issued and are affected by such repair and relocation.

Landlord agrees to cooperate with Tenant in relocating existing utility lines and facilities on the Demised Premises which need to be relocated to develop or improve the Project, including reasonable use of existing easements benefiting the Land and adjoining rights of way to the Land. Such relocation of existing utilities shall be at the sole expense of Tenant.

Section 8.4 Rights to Erect Signs; Revenues Therefrom.

- (a) Landlord hereby agrees that, to the extent permitted by law, Tenant shall have the exclusive right, during the term of this Lease, to place, erect, maintain and operate, or cause, allow and control the placement, erection, maintenance and operation of any signs or advertisements in accordance with subparagraph (b) below, in or on the Demised Premises. Tenant shall be responsible for obtaining any and all Permits and licenses which may be required from time to time by any governmental authority for such signs and advertisements, and Landlord agrees to execute any consents reasonably necessary or required by any governmental authority as part of Tenant's application for such Permits or licenses.

- (b) The following types of signs and advertising shall be allowed, to the extent allowed by law, in the area described in subparagraph (a) above:
 - (i) Signs or advertisements identifying the Buildings and improvements to the Demised Premises and in particular office, hotel, residential, retail, and commercial uses therein;
 - (ii) Signs or advertisements offering any portion of the Demised Premises for sale or rent; and
 - (iii) Signs or advertisements advertising or identifying any product, company, or service operating in the Demised Premises or otherwise related thereto.
- (c) Tenant shall have the right to remove any signs which, from time to time, may have become obsolete, unfit for use or which are no longer useful, necessary or profitable in the conduct of Tenant's business, or in the occupancy and enjoyment of the Demised Premises by Tenant, or any Sublessees or Space Lessees.
- (d) As used in this Lease, "sign(s)" shall be deemed to include any display of characters, letters, illustrations, logos or any ornamentation designed or used as an advertisement or to indicate direction, irrespective of whether the same be temporary or permanent, electrical, illuminated, stationary or otherwise.
- (e) Tenant shall be entitled but not required to rent or collect a fee for the display or erection of signs and advertisements.

Section 8.5 Landlord's Signs Upon Demised Premises.

System-wide informational graphics shall be allowed to be placed within the Public Areas of the ground floor of the Demised Premises at the sole expense of Landlord and at locations and in sizes mutually agreed upon by Landlord and Tenant.

Section 8.6 Tenants' Signs in Terminal and Station.

Tenant shall be permitted to place directional signs within the Terminal and Station at the sole expense of Tenant and at locations and in sizes mutually agreed to by Landlord and Tenant.

Section 8.7 Creation of Common Ownership.

Tenant shall have the right at any time during the term of this Lease to submit all or any portion of the Demised Premises to the condominium form of ownership by the recording of a Declaration in the Public Records of Miami-Dade County, Florida.

**ARTICLE 9
Repairs and Maintenance of the Premises**

Section 9.1 Tenant Repairs and Maintenance.

Except as indicated in Section 9.2, throughout the term of this Lease, Tenant, at its sole cost and expense, shall keep the Demised Premises in good order and condition, and make all necessary repairs thereto. The term "repairs" shall include all replacements, renewals, alterations, additions and betterments deemed necessary by Tenant. All repairs made by Tenant shall be at least substantially similar in quality and class to the original work, ordinary wear and tear and loss by fire or other casualty excepted. Tenant shall keep and maintain all portions of the Demised Premises and all connections created by Tenant in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Landlord, at its option, and after thirty (30) days written notice to Tenant, may perform any maintenance or repairs required of Tenant hereunder which have not been performed by Tenant following the notice described above, and may seek reasonable cost and expenses thereof from Tenant. Landlord acknowledges and agrees that Tenant has no obligations for any repairs to the Terminal and Station (including without limitation, the escalators and elevators serving the Station), except for initial replacement of elevators and escalators by Tenant and routine

janitorial services to be performed by Tenant as are expressly set forth in the Station Easement Agreement.

Section 9.2 Landlord Repairs and Maintenance.

Landlord, at its sole cost and expense, shall keep and maintain in good condition and repair the Terminal and Station (and its site and any other improvement constructed thereon), except for routine janitorial services to be performed by Tenant to the Station as expressly set forth in the Station Easement Agreement. The term "repairs" shall include all replacements, alterations, additions and betterments deemed necessary by Landlord or as required under applicable Laws and Ordinances. All repairs made by Landlord shall be substantially similar in quality and class to the original work, ordinary wear and tear and loss by fire or other casualty excepted. Landlord shall use reasonable efforts to keep and maintain all portions of the Station in a clean and orderly condition, reasonably free of dirt, rubbish, graffiti, and unlawful obstructions. Tenant, at its option, and after thirty (30) days written notice to the Landlord, may perform janitorial services required of Landlord hereunder which have not been performed by Landlord following the notice described above, and may seek reasonable cost and expenses thereof from Landlord. Landlord, except as otherwise provided in this Lease, shall have no obligation with respect to the maintenance and repair of the Demised Premises.

**ARTICLE 10
Compliance with Laws and Ordinances**

Section 10.1 Compliance by Tenant and Landlord.

Throughout the term of this Lease, Tenant, at Tenant's sole cost and expense, shall promptly comply with all applicable Laws and Ordinances relating to the Air Rights. To the extent that Tenant's compliance shall require the cooperation and participation of Landlord, Landlord agrees to use its best

efforts to cooperate and participate. Landlord shall, at Landlord's sole cost and expense, comply with all applicable Laws and Ordinances relating to the Terminal and the Station.

Section 10.2 Contest by Tenant.

Tenant shall have the right, after prior written notice to Landlord, to contest the validity or application of any Law or Ordinance by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant without cost or expense to Landlord, except as may be required in Landlord's capacity as a party adverse to Tenant in such contest. If counsel is required, the same shall be selected and paid by Tenant. Landlord hereby agrees to execute and deliver any necessary papers, affidavits, forms or other such documents necessary for Tenant to confirm or acquire status to contest the validity or application of any Law or Ordinance, which instrument shall be subject to the reasonable approval of counsel for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall not be required to join in any such contest unless its joinder is required for a contest to be valid.

**ARTICLE 11
Changes and Alterations to Buildings by Tenant**

Tenant, with Landlord's approval, shall have the right at any time and from time to time during the term of this Lease, at its sole cost and expense, to expand, rebuild, alter and/or reconstruct the Buildings and to raze the Buildings provided any such razing shall be preliminary to and in connection with the rebuilding of a new Building or Buildings and provided further that unless waived by Landlord:

- (a) the method, schedule, plans and specifications for such razing and rebuilding of a new Building or Buildings are submitted to Landlord for its reasonable approval at least one hundred eighty (180) days prior to the commencement of any razing;
- (b) the rebuilding, reconstruction or razing shall be subject to this Lease;

- (c) the rebuilding, reconstruction or razing does not at any time change or adversely affect the Terminal and Station entrances, or any access thereto except as may be required by Laws and Ordinances or agreed to by Landlord; and
- (d) Tenant obtains all approvals, Permits and authorizations required under applicable Ordinances and Laws.

The provisions of this Section are not intended to apply to any normal and periodic maintenance, operation, and repair of the Buildings; or any non-material or interior alterations made to the Buildings.

ARTICLE 12 Discharge of Obligations

Section 12.1 Tenant's Duty.

During the term of this Lease, except for Leasehold Mortgages or as otherwise allowed under this Lease, Tenant will discharge any and all obligations incurred by Tenant which give rise to any liens on the Demised Premises, it being understood and agreed that Tenant shall have the right to withhold any payment (or to transfer any such lien to a bond in accordance with applicable Florida law) so long as it is in good faith disputing liability therefor or the amount thereof, provided (a) such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, or disputed payments are escrowed while the parties negotiate the dispute, and (b) such action does not subject Landlord to any expense or liability. In the event Tenant withholds any payment as described herein, it shall give written notice to Landlord of such action and the basis therefor. Tenant shall record the applicable notice of commencement with the Section 255, Florida Statutes performance bond information attached thereto as required under Section 713 and Section 255 of the Florida State Statutes.

Section 12.2 Landlord's Duty.

During the term of this Lease, Landlord will discharge any and all obligations incurred by Landlord which give rise to any liens on the Terminal, Station or the Demised Premises, it being understood and agreed that Landlord shall have the right to withhold any payment so long as it is in good faith disputing liability therefor or the amount thereof, provided such contest of liability or amount operates as a stay of all sale, entry, foreclosure, or other collection proceedings in regard to such obligations, and such action does not subject Tenant to any expense or liability.

**ARTICLE 13
Use of Premises**

Section 13.1 Use of Demised Premises by Tenant.

- (a) The Demised Premises shall not knowingly be used for the following:
 - (i) any unlawful or illegal business, use or purpose, or for any business, use or purpose which is extra-hazardous or constitutes a legal nuisance of any kind (public or private); or
 - (ii) any purpose which violates the approvals of applicable government authorities.
- (b) No covenant, agreement, lease, Sublease, Space Lease, Leasehold Mortgage, conveyance or other instrument shall be effected or executed by Tenant, or any of its successors or assigns, whereby the Demised Premises or any portion thereof is restricted by Tenant, or any successor in interest, upon the basis of race, color, religion, gender identity, gender expression, sexual orientation, sex or national origin in the sale, lease, use or occupancy thereof. Tenant shall comply with all applicable state and local laws, in effect from time to time, prohibiting discrimination or segregation by

reason of race, color, religion, sexual orientation, sex, or national origin in the sale, lease or occupancy of the Demised Premises.

- (c) Except as otherwise specified, Tenant may use the Demised Premises for any lawful purpose or use authorized by this Lease and allowed under the Laws and Ordinances establishing the zoning for the Demised Premises (provided Tenant otherwise complies with the terms and conditions hereof). Tenant shall not knowingly suffer any act to be done or any condition to exist in or on the Demised Premises or any part thereof or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force with respect thereto.

Section 13.2 Dangerous Liquids and Materials.

Tenant shall not knowingly permit its subtenants or other person or entity in contractual privity with Tenant to carry flammable or combustible liquids into or onto the Demised Premises during or following completion of construction except as such substances are used in the ordinary course of business, and shall prohibit the storage or manufacture of any flammable or combustible liquid or dangerous or explosive materials in or on the Demised Premises. Similarly, Landlord shall not knowingly allow its employees, licensees, tenants or contractors to carry flammable or combustible liquids into or onto the Land. The restrictions in this Section 13.2 shall not apply to prevent the following:

- (a) the entry and parking of motor vehicles carrying flammable or combustible liquids solely for the purpose of their own propulsion,
- (b) the use of normal cleaning and maintenance liquids and substances, or
- (c) their use in construction of Buildings and improvements on the Demised Premises.

Section 13.3 Tenant's Duty and Landlord's Right of Enforcement Against Tenant and Successor and Assignee.

Tenant, promptly upon learning of the occurrence of actions prohibited by Section 13.1 and 13.2 and applicable to Tenant, shall take immediate steps to terminate same, including the bringing of a suit in Circuit Court, if necessary, but not the taking or defending of any appeal therefrom. In the event Tenant does not promptly take steps to terminate a prohibited action, Landlord or Miami-Dade County may seek appropriate injunctive relief against the party or parties actually engaged in the prohibited action in the Circuit Court of Miami-Dade County without being required to prove or establish that Landlord or Miami-Dade County have inadequate remedies at law. The provisions of this Section shall be deemed automatically included in all Leasehold Mortgages and any other conveyances, transfers and assignments under this Lease, and any Transferee who accepts such Leasehold Mortgage or any other conveyance, transfer or assignment hereunder shall be deemed by such acceptance to adopt, ratify, confirm and consent to the provisions of Sections 13.1, 13.2 and 13.3 and to Landlord's and Miami-Dade County's rights to obtain the injunctive relief specified therein.

Section 13.4 Designation of Buildings by Name.

Tenant shall have the right and privilege of designating name(s) by which the Buildings thereof shall be known. The foregoing naming rights do not apply to the Station or Terminal.

ARTICLE 14
Entry on Premises by Landlord

Section 14.1 Inspection by Landlord of Demised Premises.

Landlord and its authorized representatives, upon reasonable notice and in the presence of a representative of Tenant, shall have the right to enter the Demised Premises at reasonable times during

normal business hours for the purpose of inspecting the same to insure itself of compliance with the provisions of this Lease but subject to the provisions of any Sublease.

Section 14.2 Limitations on Inspection.

Landlord, in its exercise of the right of entry granted to it in Section 14.1 herein, shall (a) not unreasonably disturb the occupancy of Tenant, Sublessees or Space Lessees nor disturb their business activities or the activities of the Association; and (b) with respect to any residential Sublessee, unit owner or parcel owner, or Space Lessee, shall comply with all laws, rules and regulations governing or applicable to a landlord of residential premises.

**ARTICLE 15
Limitation of Liability**

Section 15.1 Limitation of Liability of Landlord.

Landlord shall not be liable to Tenant for any incidental, punitive or consequential loss or damage whatsoever arising from the rights of Landlord hereunder, except to the extent caused by the gross negligence or willful misconduct of Landlord, its officer, employees, agents or instrumentalities.

Section 15.2 Limitation of Liability of Tenant.

Tenant shall not be liable to Landlord for any incidental, punitive or consequential loss or damage whatsoever arising from rights of Tenant hereunder, except to the extent caused by the gross negligence or willful misconduct of Tenant, its officers, employees or agents.

**ARTICLE 16
Damage and Destruction**

Section 16.1 Tenant's Duty to Restore.

If, at any time during the term of this Lease, the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and

extended coverage as same is customarily written in the State of Florida, Tenant, at its sole cost and expense, if so requested by Landlord or elected by Tenant, and provided that the insurance proceeds related to such casualty are made available to Tenant for use in connection therewith, shall repair, alter, restore, replace or rebuild the same as nearly as reasonably possible to its value, conditions and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of this Lease and modern construction techniques and methods. Provided Tenant otherwise complies with the terms of this Lease and obtains Landlord's approval, which approval shall not be unreasonably withheld or delayed, it may construct Buildings and improvements which are larger, smaller or different in design, function or use and which represent a use comparable to prior use or compatible with uses of property in the immediate geographical area, to the extent such construction and improvement are allowed by Article 4 of this Lease and by applicable Laws and Ordinances. Such repairs, alterations, restoration, replacements or rebuilding, including such changes and alterations as aforementioned and including temporary repairs for the protection of other property pending the completion of any thereof, are sometimes referred to in this Article 16 as the "Work." However, in the event insurance proceeds related to such casualty are not made available to Tenant for use in connection therewith and Tenant elects not to rebuild, Landlord and Tenant shall each have the right to terminate this Lease. Tenant shall be permitted access to the Terminal as is reasonably required in order to perform the Work.

Section 16.2 Landlord's Duty to Repair and Rebuild Terminal and Station.

If, at any time during the term of this Lease, the Terminal and/or Station (or any part thereof) shall be damaged or destroyed by fire or other casualty covered within the insurance designation of fire and extended coverage as same is customarily written in the State of Florida, Landlord, at its sole cost and expense, if requested by Tenant, shall repair or rebuild a station and/or terminal of a design, size and

capacity as is required by Landlord's transit needs at the time of such repair or rebuilding; provided however, during such repair or rebuilding, Landlord shall not materially or adversely interfere with pedestrian or vehicular access to the portion of the Demised Premises within the Air Rights and as a result of such repair or rebuilding, the Demises Premises may not be permanently deprived of access to the Station and/or Terminal. If Landlord does not timely comply with this Section 16.2, without limiting any other remedies of Tenant, Tenant shall be permitted to make such repairs or build such improvements as Tenant deems necessary in order to access and use the Air Rights within the Demised Premises. Any contrary provision in this Section 16.2 notwithstanding, if as a result of such damage or destruction to the Terminal or Station, Landlord elects to repurpose the Terminal or Station for a use other than a station and/or terminal for transit, Landlord shall obtain the prior written approval of Tenant to such other use and the proposed alterations and construction plans to the Terminal and/or Station to accommodate same. Further, any such repurposes other than for transit shall not result in an Event of Default by Tenant for non-compliance with Section 4.1(b) of this Lease, and such Section 4.1(b) shall no longer be applicable to Tenant.

Section 16.3 Interrelationship of Lease Sections.

Except as otherwise provided in this Article 16, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all the provisions of Article 4 and Article 11 herein.

Section 16.4 Loss Payees of Tenant-Maintained Property Insurance.

The following provisions shall apply to all policies of property insurance required to be maintained by Tenant in accordance with Schedule 7 attached:

- (a) Landlord shall be named as an additional insured as its interest may appear, and

- (b) the loss thereunder shall be payable to Tenant and to any Leasehold Mortgagee under a standard mortgage endorsement. Neither Landlord nor any mortgagee of Landlord shall unreasonably withhold or delay its consent to a release of the proceeds of any fire or other casualty insurance for any loss which shall occur during the term of this Lease for repair or rebuilding. Any proceeds remaining after completion of rebuilding or repair under this Article, shall be paid to Tenant. If all the insurance proceeds are in fact made available to Tenant and such insurance proceeds received by Tenant or Leasehold Mortgagee are insufficient to pay the entire cost of the Work, Tenant shall supply the amount of such deficiency, which in the year of payment or in the year immediately prior or following the payment, shall act to reduce Gross Revenue by a like amount if same apply to the Ground Floor Retail Space.

Section 16.5 Repairs Affecting Terminal, Station or Demised Premises.

Before beginning any repairs or rebuilding, or letting any contracts in connection therewith, required by any damage to or destruction of the Demised Premises which adversely affects the Terminal or Station entrance, or any damage to or destruction of the Terminal or Station which adversely affects the entrance to the Demised Premises, Tenant or Landlord, as the case may be, shall submit for the other's approval (which approval shall not be unreasonably withheld, conditioned or delayed), Construction Plans for such repairs or rebuilding. Any such repairs and rebuilding shall be completed free and clear of liens subject to the provisions of Article 12 herein, except to the extent they are subject to Leasehold Mortgages.

Section 16.6 Termination of Lease for Certain Destruction Occurring During Last Fifteen Years of the Term of this Lease.

Notwithstanding anything to the contrary contained herein, in the event that the Improvements on the Demised Premises or any part thereof shall be damaged or destroyed by fire or other casualty during the last fifteen (15) years of the term of this Lease (or the last five (5) years of the renewal term) and the estimated cost for repair and restoration exceeds an amount equal to twenty-five percent (25%) of the then-current Fair Market Value of the Project, then Tenant shall have the right to terminate this Lease and its obligations hereunder by giving written notice to Landlord within six (6) months after such damage or destruction. In such event, this Lease shall terminate fifteen (15) days following Landlord's receipt of notice of casualty. In such event, the property insurance proceeds for the damaged Buildings and business interruption insurance proceeds shall be paid to Landlord and Leasehold Mortgagee as their respective interests may appear, the provisions of Section 16.4 notwithstanding.

ARTICLE 17
Mortgages, Transfers, Transfer of Tenant's Interest,
New Lease and Lease in Reversion

Section 17.1 Right to Transfer Leasehold.

Tenant shall have the right and privilege to sell, assign or otherwise transfer all or any portion of its rights under this Lease to, or request a Severance Lease for, an Association, such other persons, firms, corporations, general or limited partnerships, unincorporated associations, joint ventures, estates, trusts, any Federal, State, County or Municipal government bureau, department or agency thereof, or any other entities as Tenant shall select, subject, however, to the following:

- (a) Tenant shall not be subject to an Event of Default under this Lease at the time of such sale, assignment, or transfer.
- (b) Tenant shall obtain written consent of Landlord, both as to the proposed transfer and the proposed transferee prior to the completion of construction of the Project.

Notwithstanding the foregoing, upon Completion of Phase I Construction, Tenant shall have the right to request one or more Severance Leases in favor of an Affiliate of Tenant or in favor of any designee of Tenant satisfying the conditions for Tenant's release of liability set forth below provided in each case no Event of Default exists.

Any request to Landlord for such release from liability shall be in writing and shall be accompanied by copies of the proposed assignment or transfer documents, together with the latest financial statement (audited, if available) of the proposed transferee and a summary of the proposed transferee's prior experience in managing and operating real estate developments. The transfer documents shall specify the allocation, if any, of the Participation Rent and any other payments under this Lease to be paid to Landlord by the transferee. Landlord shall not unreasonably withhold or delay such consent to release from liability hereunder where the proposed transferee is an Affiliate of Tenant or has been demonstrated to have financial strength at least equal to the original Tenant (or is otherwise financially acceptable to Landlord), a sound business reputation and demonstrated managerial and operational capacity for real estate development and the transfer complies with all applicable local, county, State, and Federal laws and ordinances. In addition, the proposed transfer must be approved by State and Federal governmental agencies where applicable. Landlord reserves the right to condition the release of original Tenant from its liability under the Lease until the transferee has provided performance bonds and insurance as required under Section 1.5 and Article 7 of this Lease or to require that the assignment is subject to the transferee providing such performance bonds and insurance. Additionally, Landlord reserves the right to condition the release of the original Tenant from its liability under the Lease until receipt of temporary certificates of occupancy for the Ground Floor Retail Space and the Phase I Improvements (the Terminal). Any sale, assignment or transfer of all or any part of Tenant's interest in the Lease and the Demised Premises other than a Severance Lease shall be made expressly

subject to the terms, covenants and conditions of this Lease, and such assignee or transferee shall expressly assume all of the obligations of Tenant under this Lease applicable to that portion of the Demised Premises being sold, assigned or transferred, and agree to be subject to all conditions and restrictions to which Tenant is subject, but only for matters accruing while such assignee or transferee holds, and only related to, the sold, assigned, or transferred interest. However, nothing in this subsection or elsewhere in this Lease shall abrogate (a) Landlord's right to payment of all rent and other amounts due Landlord which accrued prior to the effective date of such transfer, or issuance of any Severance Lease and (b) the obligation for the development, use and operation of every part of the Demised Premises to be in compliance with the requirements of this Lease.

There shall also be delivered to Landlord a notice which shall designate the name and address of the transferee or tenant under a Severance Lease and the post office address of the place to which all notices required by this Lease shall be sent. Such transferee of Tenant (and all succeeding and successor transferees) or tenant under a Severance Lease shall succeed to all rights and obligations of Tenant under this Lease with respect to the portion of the Demised Premises so transferred or leased, and subject to the terms of the document of assignment or transfer, including the right to mortgage, and otherwise assign or transfer, subject, however, to all duties and obligations of Tenant, and subject to the terms of the document of assignment or transfer, in and pertaining to the then term of this Lease. Once a sale, assignment or transfer has been made or Severance Lease executed with respect to any portion of the Demised Premises, the transferee or tenant under a Severance Lease and Landlord may thereafter modify, amend or change the Lease or Severance Lease with respect to such portion of the Demised Premises, so long as Tenant has been released from all rights and obligations under the Lease pertaining to the assigned portion of the Demised Premises or premises under a Severance Lease, all subject to the provisions of the assignment or Severance Lease so long as they do not diminish or

abrogate the rights of Tenant (or anyone claiming through Tenant) as to any other part of the Demised Premises, and no such modification, amendment or change shall affect any other part of the Demised Premises or the Lease thereof.

Except as may otherwise be specifically provided in this Section 17.1, upon Landlord's consent to a transfer by any assignor, or issuance of a Severance Lease, such transferor or Tenant under this Lease shall be released and discharged from all of its duties and obligations hereunder which pertain to the portion of the Demised Premises transferred or subject to a Severance Lease for the then unexpired term of Lease.

For purposes of this Article, the words "sale," "assignment," or "transfer" shall be deemed to have similar meanings unless the context indicates otherwise except that the sale of a parcel or condominium unit subject to a Declaration shall not be deemed a sale, assignment, or transfer for purposes of this Lease. If Tenant is a corporation, limited liability company, unincorporated association, general or limited partnership, or joint venture, the transfer, assignment, or hypothecation of (a) any stock of Tenant in the case Tenant is a corporation, (b) partnership interest in Tenant, in the case Tenant is a general or limited partnership, (c) members interest in Tenant, in the case Tenant is a limited liability company, or (d) interest in Tenant, in the case Tenant is another type of entity, in which the aggregate is in excess of fifty percent (50%) of the ownership of such corporation, limited or general partnership, limited liability company or another type of entity, shall be deemed an assignment within the meaning and provisions of this Section. "In the aggregate" means the sum of all stock or other interests transferred over the entire period of this lease.

Section 17.2 Right to Mortgage Leasehold.

Notwithstanding Section 17.1 to the contrary, Tenant, any holder of a Severance Lease or any Sublessee, shall have the right from time to time, and without prior consent of Landlord, to mortgage

its rights under this Lease, or its estate by a Leasehold Mortgage or Mortgages. Such mortgages shall be expressly subject to the terms, covenants and conditions of this Lease, and at all times shall be inferior and subject to the prior right, title and interest of Landlord herein as security for the performance of the terms and conditions of this Lease. Tenant shall provide Landlord with a copy of all such Leasehold Mortgages. The granting of a Leasehold Mortgage or Mortgages against all or part of the leasehold estate in the Demised Premises shall not operate to make the Leasehold Mortgagee(s) thereunder liable for performance of any of the covenants or obligations of Tenant under this Lease, except in the case of a Leasehold Mortgagee which owns or is in possession of all or a portion of the Demised Premises, and then only for the applicable portion of the Demised Premises, and its period of ownership or possession, but Landlord shall always have the right to enforce the Lease obligations against such portion of the Demised Premises, including such obligations accruing prior to such period of ownership or possession, subject to the terms hereof. The amount of any such Leasehold Mortgage may be increased whether by an additional mortgage and agreement consolidating the liens of such Leasehold Mortgages or by amendment of the existing Leasehold Mortgage, and may be permanent or temporary, replaced, extended, increased, refinanced, consolidated or renewed on any portion of the Demised Premises without the consent of Landlord. Such Leasehold Mortgage(s) may contain a provision for an assignment of any rents, revenues, monies or other payments due to Tenant as a landlord (but not from Tenant) and a provision therein that the Leasehold Mortgagee(s) in any action to foreclose the same shall be entitled to the appointment of a receiver. Any Association, parcel owner or unit owner under a Declaration shall have an unrestricted right to encumber its interest without notice to Landlord and such encumbrance shall not be deemed a Leasehold Mortgage under this Lease.

Section 17.3 Notice to Landlord of Declaration or Leasehold Mortgage.

Written notice of each Leasehold Mortgage or Declaration shall be delivered to Landlord specifying the name and address of such Leasehold Mortgagee or Association to which notices shall be sent and Landlord shall be furnished a copy of each such recorded mortgage or Declaration. Any Declaration shall require the Association to give written notice to Landlord specifying the name and notice address of the Association and the name and notice address of any Leasehold Mortgagee holding a Leasehold Mortgage given by the Association. For the benefit of any such Leasehold Mortgagee which shall have become entitled to notice as hereinafter provided in this Article 17, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender or termination of this Lease at any time while such Leasehold Mortgage(s) shall remain a lien on Tenant's leasehold estate. Tenant shall advise and obtain the written consent of any such Leasehold Mortgagee(s) prior to any modification of this Lease with respect to the portion of the Demised Premises subject to such Leasehold Mortgage(s) and no sale or transfer of Landlord's fee simple interest in the Land or any portion thereof to Tenant shall terminate this Lease by merger or otherwise so long as the lien of the Leasehold Mortgage remains undischarged. The foregoing is not meant to prohibit a sale of the fee to Tenant.

Section 17.4 Notices to Leasehold Mortgagee(s)

No notice of default under Section 19.1 or notice of failure to cure a default under Section 19.2(a) shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Leasehold Mortgagee or Association who shall have notified Landlord pursuant to Sections 17.1 or 17.3 of its name, address and its interest in the Demised Premises prior to Landlord's issuance of such notice. Landlord agrees to accept performance and compliance by any such Leasehold Mortgagee or Association of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under Sections

17.5 or 19.2. Nothing contained herein shall be construed as imposing any obligation upon any such Leasehold Mortgagee or Association to so perform or comply on behalf of Tenant.

Section 17.5 Leasehold in Reversion and Right to New Lease.

- (a) Tenant's right to mortgage this Lease and the leasehold estate in whole or in part shall include the right of any Leasehold Mortgagee to require a lease in reversion which lease in reversion shall have the same terms and provisions, including expiration date, as this Lease. The Leasehold Mortgagee shall have the right to take this Lease by lease in reversion or by assignment in lieu of foreclosure and to sell it either after foreclosure or after taking the assignment or becoming tenant under the lease in reversion. The Leasehold Mortgagee shall not be liable for Tenant's obligations hereunder until such a time as it becomes the new tenant, either by lease in reversion, foreclosure or assignment and then only for the period of its ownership or possession of the leasehold estate.

Notwithstanding the foregoing, if Landlord has issued a Notice of Default to Tenant and said default(s) have not been cured within the timeframe specified in Article 19 of this Lease, the County shall have the right to terminate this Lease whether or not the Leasehold Mortgagee has become Tenant through lease in reversion, foreclosure or assignment.

- (b) Should this Lease terminate by reason of any Event of Default by Tenant, Landlord shall give notice to all Leasehold Mortgagees and Associations. Landlord shall, upon receipt of a written request from a Leasehold Mortgagee or its nominee or an Association within 60 days after giving notice of such termination, execute and deliver a new lease of the Demised Premises to the Leasehold Mortgagee or its nominee or the Association for the remainder of the term of this Lease with the same provisions

contained in this Lease except for (x) any which have been satisfied by or on behalf of Tenant prior to termination and (y) those obligations from which any Leasehold Mortgagee is relieved pursuant to this Section 17.5(b). No such termination of this Lease shall effect a termination of this Section 17.5(b) and the rights granted Leasehold Mortgagees. Upon execution and delivery of such new lease, the Leasehold Mortgagee or its nominee or the Association shall be responsible for taking such action as may be necessary to remove Tenant under the previous lease from the Demised Premises. Landlord agrees to cooperate with the Leasehold Mortgagee or its nominee or the Association in connection with such removal. Landlord's obligation to enter into such new lease shall be conditioned upon a Leasehold Mortgagee having remedied and cured all monetary defaults and having remedied and cured or having commenced and diligently prosecuting the cure of all non-monetary defaults of Tenant susceptible to cure by any party other than by Tenant. If Landlord receives written requests in accordance with this Section from more than one Leasehold Mortgagee, Landlord shall only be required to deliver the new lease to the holder of the most junior Leasehold Mortgage requesting a new lease.

Section 17.6 Rights to Sublease and Non-Disturbance to Sublessees and/or Space Lessees.

Tenant shall have the right to enter a Sublease or Space Lease without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no Sublease or Space Lease shall relieve Tenant of any obligations under the terms of this Lease. Additionally, each Sublease or Space Lease must be for a use compatible with the standards and requirements set forth in Section 4.1 herein. Landlord agrees to grant Non-Disturbance Agreements for Space Lessees or Sublessees which provide, in the event of a termination of this Lease which applies to the portion of the Demised

Premises covered by such Space Lessee's or Sublessees Space Lease or Sublease, such Space Lessee or Sublessee will not be disturbed and will be allowed to continue peacefully in possession under its Space Lease or Sublease, provided that the following conditions are met:

- (a) the Space Lease or Sublease is an arms' length transaction on market terms; and
- (b) the Space Lessee or Sublessee is not a "related party" to Tenant; and
- (c) the Space Lessee or Sublessee shall be in compliance with the terms and conditions of its Space Lease or Sublease; and
- (d) the Space Lessee or Sublessee shall agree to attorn to Landlord.

Landlord further agrees that it will grant such assurances to such Space Lessees or Sublessees so long as they remain in compliance with the terms of their Space Leases or Subleases, and provided further that any such Space Leases or Subleases do not extend beyond the expiration of the term of this Lease.

Section 17.7 Estoppel Certificates from Landlord.

Upon request of Tenant or any Leasehold Mortgagee or Association, Landlord agrees to give such requesting party an estoppel certificate in accordance with Section 22.2 herein.

Section 17.8 Limited Waiver of Landlord Lien.

In order to enable Tenant, any Association or any Sublessees and Space Lessees to secure financing for the purchase of fixtures, equipment, and other personalty to be located on or in the Demised Premises, whether by security agreement and financing statement, mortgage or other form of security instrument, Landlord does waive and will from time to time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory or common law liens securing payment of rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment or other personalty.

Section 17.9 No Subordination or Mortgaging of Landlord's Fee Title.

There shall be no subordination of Landlord's fee simple interest in the Land to the lien of any Leasehold Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Leasehold Mortgagee may impose any lien upon Landlord's fee simple interest in the Land.

Section 17.10 Transfer of Interest by Landlord.

If Miami-Dade County or any successor to its interest hereunder ceases to have any interest in the Demised Premises or if there is any sale or transfer of Landlord's interest in the Demised Premises, the seller or transferor shall be entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed after the date of such sale or transfer provided that the purchaser, successor or transferee of Landlord's interest in the Demised Premises assumes in writing all such agreements, covenants and obligations of Landlord. Nothing herein shall be construed to relieve Landlord from any liability or damages arising from actions or omissions occurring or agreements, covenants and obligations required to be performed prior to the date of any such assignment, transfer or sale of Landlord's interest hereunder. Notwithstanding the foregoing and without limiting the previous sentence, Miami-Dade County shall remain liable for the representations and warranties of Section 24.1.

**ARTICLE 18
Eminent Domain**

Section 18.1 Taking of Entire Premises.

If at any time during the term of this Lease the power of eminent domain shall be exercised by any federal or state sovereign or their proper delegates, by condemnation proceeding (a "Taking"), to acquire the entire Demised Premises, such Taking shall be deemed to have caused this Lease to terminate and expire on the date of such Taking. Tenant's right to recover a portion of the award for a

Taking, as hereinafter provided, is limited to the fair market value of the Buildings and other improvements, plus the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease, and in no event shall Tenant be entitled to compensation for any fee interest in the Land. Notwithstanding anything herein contained to the contrary, Landlord shall be entitled to receive from the condemning authority not less than the appraised value of the Land, subject to the Lease, and as if vacant and assuming no improvements existed on the Property, at the time of taking. For the purpose of this Article 18, the date of Taking shall be deemed to be either the date on which actual possession of the Demised Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority pursuant to the Taking or the date on which title vests therein, whichever is earlier. All monetary payments required to be paid by Tenant under this Lease shall be paid up to the date of such Taking. In addition to any award Tenant receives from the Taking authority, Landlord shall pay to Tenant the Taking Rent Compensation within sixty (60) days after the Taking. Tenant and Landlord shall, in all other respects, keep, observe and perform all the terms of this Lease up to the date of such Taking. Inasmuch as Tenant will pay all Rent in advance in accordance with Section 3.1, upon the occurrence of a Taking after the payment of Rent, Tenant will not be able to (a) cease paying rent for periods after a termination of this Lease under this Section 18, as no further rent is due or (b) receive an equitable abatement of rent in the event of a Taking of less than the entire Demised Premises and this Lease continues. In lieu of the foregoing (i) upon a termination of this Lease pursuant to this Section 18, Landlord shall reimburse Tenant the Early Termination Rent Refund, and (ii) in the event of a Taking of less than the entire Demised Premises and this Lease continues, Landlord shall pay Tenant the Early Termination Rent Refund, but same shall be partially reduced on an equitable basis to be agreed upon by Landlord and Tenant, to fairly compensate Tenant for the

prepaid Rent attributed to the portion of the term of the Lease occurring after the Taking. The Landlord payments in subparts (i) and (ii) above are the "Taking Rent Compensation").

Section 18.2 Proceeds of Taking.

In the event following any such Taking as aforesaid, this Lease is terminated, or in the event following a Taking of less than the whole of the Demised Premises this Lease is terminated as provided for in Section 18.3 herein, the proceeds of any such Taking (whole or partial) shall be distributed as described in Section 18.1, and in addition to any amount Tenant receives from the Taking authority, Landlord shall pay to Tenant the Taking Rent Compensation within sixty (60) days after the Taking. If the value of the respective interests of Landlord and Tenant shall be determined according to the foregoing provisions of this Section 18 in the proceeding pursuant to which the Demised Premises shall have been taken, the values so determined shall be conclusive upon Landlord and Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement between Landlord and Tenant, or if they are unable to agree, by an apportionment hearing within the condemnation proceeding so that the allocation between the parties is fair and equitable. Leasehold Mortgagees shall be entitled to participate in any proceedings in connection with a Taking, and to receive directly from the taking authority any sums to which they are found to be entitled.

Section 18.3 Partial Taking; Termination of Lease.

If, in the event of a Taking of less than the entire Demised Premises, the remaining portion of the Demised Premises not so taken cannot be adequately restored, repaired or reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking, as reasonably determined by Tenant, then Tenant shall have the right, to be exercised by written notice to Landlord within one hundred twenty (120) days after the date of Taking, to terminate this Lease on a date to be specified in said notice,

which date shall not be earlier than the date of such Taking, in which case Tenant shall pay and shall satisfy all rents, revenues and other payments due and accrued hereunder up to the date of such termination and shall perform all of the obligations of Tenant hereunder to such date, and thereupon this Lease and the term herein demised shall cease and terminate. Upon such termination Tenant's interest under this Lease in the remainder of the Demised Premises not taken shall be sold in accordance with applicable Law, and the proceeds of the sale shall be combined with the award given for the partial Taking with the entire amount then being distributed as if a total Taking had occurred. In addition to any award Tenant receives from the Taking authority, Landlord shall pay to Tenant the Taking Rent Compensation within sixty (60) days after the termination of this Lease. Landlord shall have the option to purchase Tenant's interest under this Lease in the remainder of the Demised Premises at its fair market value for a period of sixty (60) days after the determination of fair market value, which value shall be determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party, within one hundred and fifty (150) days from the date the Lease was terminated). The fair market value specified in the preceding sentence shall be limited to the fair market value of the Buildings and improvements, which fair market value shall include the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease, and in no event shall such value include any fee simple interest in the Land. All appraisal costs shall be split equally between Landlord and Tenant. If Landlord fails to purchase, the remainder may be sold.

Section 18.4 Partial Taking; Continuation of Lease.

If following a partial Taking this Lease is not terminated as hereinabove provided, then this Lease shall terminate as to the portion of the Demised Premises taken in such condemnation proceedings; and, as to that portion of the Demised Premises not taken Tenant shall proceed at its own cost and

expense either to make an adequate restoration, repair or reconstruction or to rebuild a new Building upon the Demised Premises affected by the Taking. In such event, Tenant's share of the award shall be determined in accordance with Section 18.1 herein. Such award to Tenant shall be used by Tenant for its reconstruction, repair or rebuilding. Any excess award after such reconstruction, repair or rebuilding, may be retained by Tenant. If the part of the award so paid to Tenant is insufficient to pay for such restoration, repair or reconstruction, Tenant shall pay the remaining cost thereof, and shall fully pay for all such restoration, repair and reconstruction, and complete the same to the reasonable satisfaction of Landlord free from mechanics' or material men's liens and shall at all times save Landlord free and harmless from any and all such liens. In the event, the partial Taking results in making it impossible or unfeasible to reconstruct, restore, repair or rebuild a new Building as reasonable determined by Tenant, Tenant's share of the award shall be determined in accordance with Section 18.1 herein. In such event, if Tenant elects not to terminate this Lease, then in addition to any award Tenant receives from the Taking authority, Landlord shall pay to Tenant the Taking Rent Compensation within sixty (60) days after the Taking, except that if such Taking occurs before the One Time Rent is paid by Tenant, then the One Time Rent shall be partially abated on an equitable basis to be agreed to by Tenant and Landlord.

Section 18.5 Temporary Taking.

If the whole or any part of the Demised Premises or of Tenant's interest under this Lease be taken or condemned by any competent authority, "Taking Authority", for its or their temporary use or occupancy not exceeding one year, this Lease shall not terminate by reason thereof. In the event of any such temporary Taking, Tenant shall be entitled to receive the entire amount of any award made for such temporary Taking (attributable to the period within the term of the Lease), whether paid by way of damages, rent or otherwise. Tenant covenants that, upon the termination of any such period of

temporary Taking, prior to the expiration of the term of this Lease, it will, at its sole cost and expense, restore the Demised Premises, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such Taking, provided that the Taking Authority compensates Tenant for such restoration.

Section 18.6 Additional Takings.

In case of a second, or any additional partial Taking or Takings from time to time, the provisions hereinabove contained shall apply to each such partial Taking. In the event any federal or state sovereign or their proper delegates with the power of eminent domain appropriates or condemns all or a portion of the Demised Premises, and Landlord is a beneficiary of such Taking, the award shall be divided in accordance with the provisions of this Article 18. In that event, in accordance with the provisions hereof, Tenant shall restore, repair, or reconstruct any portion of the Demised Premises not taken; provided that if the award so paid to Tenant shall be insufficient to fully pay for such restoration, repair or reconstruction, Tenant shall have the option of:

- (a) Repairing at its expense, in which event the provisions of Article 16 herein shall control, or
- (b) Terminating the Lease in which event the provisions of Article 16 herein shall control.

Section 18.7 Inverse Condemnation or Other Damages.

In the event of damage to the value of the Demised Premises by reason of change of grade, access rights, street alignments or any other governmental or quasi-governmental act (not involving Landlord) which constitutes an inverse condemnation of any portion of the Demised Premises creating a right to full compensation therefor, then Landlord and Tenant shall each be entitled to claim and receive from the net payment or award made on account thereof, the compensation for their respective estates and interests.

Section 18.8 Involuntary Conversion.

In the event any Taking or other like proceeding or threat or imminence thereof shall occur as provided for hereinabove or otherwise, Landlord and Tenant agree to cooperate with each other in order to provide proper evidence of communication of the proceeding or threat or imminence thereof (including evidence of like Takings under Section 18.7) to the Internal Revenue Service for purposes of determining whether property has been voluntarily converted within the meaning of the Internal Revenue Code.

Section 18.9 Condemnation of Fee Interest.

Notwithstanding anything in Article 18 to the contrary, Landlord hereby covenants and agrees with Tenant that (i) it will not agree to any Taking by any party without the consent of Tenant which may be withheld in Tenant's sole direction, (ii) it will contest such Taking, and (iii) it will, as part of its defense against a Taking, avail itself of the defense, if available, that one entity with condemnation powers cannot condemn the property of another entity with similar powers.

**ARTICLE 19
Default by Tenant or Landlord**

Section 19.1 Events of Default of Tenant.

The following acts shall be considered Events of Default of Tenant:

- (a) Tenant fails to pay on time any rent, revenues or other monies due and payable to Landlord under this Lease when and as the same shall become due and payable or fails to submit statements of Gross Revenue within the time period specified and as required by Section 3.3 of this Lease. Tenant shall have thirty (30) days to cure any default under this paragraph (a) after written notice thereof from Landlord to Tenant,

with copies thereof to each Leasehold Mortgagee who shall have notified Landlord of its name, address and interest prior to such notice; or

- (b) Tenant fails to keep, observe or perform any of the terms contained in this Lease as and when due excepting the obligation to pay rents, revenues or other monies due Landlord. Tenant has one hundred twenty (120) days to cure such default after written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Leasehold Mortgagee or Association who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default or contingency which cannot with due diligence and in good faith be cured within one hundred twenty (120) days, Tenant fails within said one hundred twenty (120) day period to proceed promptly and with due diligence and in good faith to pursue curing said default.

Section 19.2 Failure to Cure Default.

- (a) If an Event of Default of Tenant shall occur, Landlord, at any time after the periods set forth in Section 19.1 and said Event of Default has remained uncured within such applicable period, Landlord shall give written notice to Tenant and to any Leasehold Mortgagee or Association who has notified Landlord in accordance with Sections 17.1 or 17.3, stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, during which time Tenant and/or the Leasehold Mortgagee(s) or any Association shall have the right to cure such default, and upon the date specified in such notice if the Event of Default has not been cured, then, subject, however, to the provisions below and in Section 17.4 herein, this Lease and the term hereby demised

and all rights of Tenant, any Association and Leasehold Mortgagee(s) under this Lease, shall expire and terminate. Notwithstanding the foregoing, in the case of an Event of Default which cannot be cured within the period otherwise provided, the period to cure shall be deemed to be extended for an additional period as, with all due diligence and in good faith, is necessary to cure the Event of Default, but in no event shall such extension exceed an additional 365 days.

- (i) Any Event of Default or default under this Lease which cannot be reasonably remedied by a Leasehold Mortgagee or Association shall be deemed to be remedied or waived if (i) within 60 days after receiving written notice from Landlord specifying the nature of such Event of Default or default, any Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings in the nature thereof,
- (ii) any Leasehold Mortgagee diligently and continuously prosecutes any such proceedings to completion, and (iii) any Leasehold Mortgagee or Association shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such 60 day period and shall thereafter continue to faithfully perform all such monetary obligations. Upon assumption of possession of the Demised Premises by a Leasehold Mortgagee or an Association, the Leasehold Mortgagee or an Association shall perform all of the obligations of Tenant as and when the same are due except such obligations particularly personal to the then Tenant and not capable of being performed by the Leasehold Mortgagee or Association which shall be deemed waived. Any assignee or successor in interest to a Leasehold Mortgagee or an Association

that has become the owner of the Lease shall assume all of Tenant's obligations, excluding (x) those not capable of being performed by a Leasehold Mortgagee or Association and (y) personal liabilities under this Lease arising prior to the time of acquisition of ownership of the leasehold estate.

- (ii) If any Leasehold Mortgagee or Association is prohibited by any judicial process or injunction or by reason of any action by any court having jurisdiction of any bankruptcy, debtor rehabilitation or insolvency proceedings involving Tenant from acquiring Tenant's leasehold estate or commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time periods specified in Sections 19.1 and 19.2(a) shall be extended for the period of such prohibition, provided the Leasehold Mortgagee or Association shall (x) cure any default in the payment of any monetary obligations of Tenant under this Lease, (y) continue to pay currently such monetary obligations as and when the same become due and (z) diligently attempt to remove such prohibition.
- (b) If an Event of Default of Tenant shall occur and the rights of Leasehold Mortgagees or any Association shall not have been exercised as provided within this Lease, then Landlord, at any time after the periods for exercise of rights as set forth under Section 17.4, 19.1, and 19.2 herein shall have the following rights and remedies which are cumulative:
 - (i) in addition to any and all other remedies in law or in equity that Landlord may have against Tenant, Landlord shall be entitled to sue Tenant for all damages (as limited by Section 15.2), costs and expenses arising from Tenant's

committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels;

- (ii) to restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default and to obtain a decree specifically compelling performance of any such term or provision of the Lease; and
- (iii) to terminate any and all obligations that Landlord may have under this Lease, in which event Landlord shall be released and relieved from any and all liability under this Lease.

Landlord agrees and acknowledges that Tenant may construct a condominium as part of the Project. Landlord will cooperate with Tenant in supplying any requirements from a landlord under Section 718.401 of Florida Statutes. Tenant agrees that a copy of this Lease will be included in any offering materials distributed by Tenant in connection with the sale of condominium units.

Section 19.3 Surrender of Demised Premises.

Upon any expiration or termination in accordance with the terms and conditions of this Lease, Tenant and all Sublessees and Space Lessees shall quit and peacefully surrender the Demised Premises to Landlord, except as provided under any non-disturbance agreement provided by Landlord to any Sublessee or Space Lessees.

Section 19.4 Rights of Landlord After Termination.

Landlord shall in no way be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due for any such reletting.

Section 19.5 No Waiver by Landlord.

No failure by Landlord to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

Section 19.6 Events of Default of Landlord.

The provisions of Section 19.7 shall apply if any of the following "Events of Default of Landlord" shall happen: if default shall be made by Landlord in keeping, observing or performing any of the duties imposed upon Landlord pursuant to the terms of this Lease and such default shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord setting forth with reasonable specificity the nature of the alleged breach; or, in the case of any such default or contingency which cannot, with due diligence and in good faith, be cured within thirty (30) days, Landlord fails within said thirty (30) day period to proceed promptly after such notice and with due diligence and in good faith to cure said Event of Default.

Section 19.7 Failure to Cure Default by Landlord.

If an Event of Default of Landlord shall occur, Tenant, at any time after the period set forth in Section 19.6 shall have the following rights and remedies which are cumulative:

- (a) In addition to any and all other remedies, in law or in equity, that Tenant may have against Landlord, Tenant shall be entitled to sue Landlord for all damages (as limited by Section 15.1 above), costs and expenses arising from Landlord's committing an Event of Default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels.
- (b) To restrain, by injunction, the commission of or attempt or threatened commission of an Event of Default of Landlord and to obtain a decree specifically compelling performance of any such term or provision of the Lease.
- (c) To terminate any and all obligations that Tenant may have under this Lease, in which event Tenant shall be released and relieved from any and all liability under this Lease and shall surrender possession of the Demised Premises to Landlord, and within sixty (60) days after such termination, Landlord shall refund to Tenant the Early Termination Rent Refund.

Section 19.8 No Waiver by Tenant.

Failure by Tenant to insist upon the strict performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, shall not constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Landlord, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Tenant. No waiver of any default of Landlord hereunder shall be implied from any omission by Tenant to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver

and then only for the time and to the extent therein stated. One or more waivers by Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

ARTICLE 20 Notices

Section 20.1 Addresses.

All notices, demands or requests by Landlord to Tenant shall be deemed to have been properly served or given, if addressed to Tenant as follows:

Resorts World Miami LLC
1501 Biscayne Boulevard, Suite 500
Miami, Florida 33132
Attn: General Counsel

With a copy to:

Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131-3456
Attn: Albert E. Dotson, Jr., Esquire

and to such other address and to the attention of such other party as Tenant may, from time to time, designate by written notice to Landlord. If Tenant at any time during the term hereof changes its office address as herein stated, Tenant will promptly give notice of same in writing to Landlord. The Leasehold Mortgagee shall be deemed to have been properly served or given notice if addressed to such party at the address furnished pursuant to the provisions of Sections 17.1 and 17.3 above. All notices, demands or requests by Tenant or by a Leasehold Mortgagee to Landlord shall be deemed to have been properly served or given if addressed to Miami-Dade Transportation and Public Works Department, Director, or designee, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to Miami-Dade Transportation and Public Works Department, Assistant Director of Engineering, Planning and Development, 701 N.W. 1st Court, 17th Floor, Miami, Florida, 33136 and to such other

addresses and to the attention of such other parties as Landlord may, from time to time, designate by written notice to Tenant. If Landlord at any time during the term hereof changes its office address as herein stated, Landlord will promptly give notice of same in writing to Tenant.

Section 20.2 Method of Transmitting Notice.

All such notices, demands or requests (a "Notice") shall be sent by: (i) United States registered or certified mail, return receipt requested, (ii) hand delivery, (iii) nationally recognized overnight courier, or (iv) electronic transmission, provided the electronic transmission confirms receipt of the transmission and the original of the Notice is sent by one of the foregoing means of transmitting Notice within 24 hours of the electronic transmission. All postage or other charges incurred for transmitting of Notices shall be paid by the party sending same. Such Notices shall be deemed served or given on (i) the date received, (ii) the date delivery of such Notice was refused or unclaimed, or (iii) the date noted on the return receipt or delivery receipt as the date delivery thereof was determined impossible to accomplish because of an unnoticed change of address.

**ARTICLE 21
Quiet Enjoyment**

Tenant, upon paying all rents, revenues and other monies herein provided for and performing in accordance with the terms, agreements, and provisions of this Lease, shall peaceably and quietly have, hold and enjoy the Demised Premises during the term of this Lease without interruption, disturbance, hindrance or molestation by Landlord or by anyone claiming by, through or under Landlord.

**ARTICLE 22
Certificates by Landlord and Tenant**

Section 22.1 Tenant Certificates.

Tenant agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modification), and the dates to which the rents, payments and other monies have been paid, and stating (to the best of Tenant's knowledge) whether or not Landlord is in default in keeping, observing or performing any of the terms of this Lease; and, if in default, specifying each such default (limited to those defaults of which Tenant has knowledge) and containing such other information relating to this Lease as reasonably requested. It is intended that any such statement delivered pursuant to this Section 22.1 may be relied upon by Landlord or any prospective assignee, transferee or purchaser of the fee, but reliance on such certificate shall not extend to any default of Landlord as to which Tenant shall have no actual knowledge.

Section 22.2 Landlord Certificates.

Landlord agrees at any time and from time to time, upon not less than thirty (30) days' prior written notice by Tenant or by any Sublessee, Association or Leasehold Mortgagee, to furnish a statement in writing, in substantially the form approved by Tenant and attached hereto as Schedule 22.2 (or on such other form as shall be required by any Leasehold Mortgage) setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default,

specifying each such default of which Landlord may have knowledge; and containing such further information relating to this Lease as reasonably requested. It is intended that any such statement delivered pursuant to this Section 22.2 may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in this Lease, or any Sublessee, Association, Leasehold Mortgagee or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have had no actual knowledge and containing such further information relating to this Lease as reasonably requested.

ARTICLE 23

Construction of Terms and Miscellaneous

Section 23.1 Severability.

If any provisions of this Lease or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.

Section 23.2 Captions.

The Article headings and captions of this Lease and the Table of Contents preceding this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

Section 23.3 Relationship of Parties.

This Lease does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of Landlord and Tenant or lessor and lessee.

Section 23.4 Recording.

A Memorandum of this Lease, or at Tenant's behest, a full copy hereof, shall be recorded among the Public Records of Miami-Dade County, Florida, at the sole cost of Tenant.

Section 23.5 Construction.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Lease was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the drafters shall be inapplicable to this Lease which has been drafted by counsel for both Landlord and Tenant.

Section 23.6 Consents.

Whenever in this Lease the consent or approval of Landlord or Tenant is required, such consent or approval shall be made by the County Mayor or County Mayor's designee on behalf of Landlord and:

- (a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary, and shall not require a fee from the party requesting same;
- (b) shall not be effective unless it is in writing; and
- (c) shall apply only to the specific act or transaction so approved or consented to and shall not relieve Tenant or Landlord, as applicable, of the obligation of obtaining the other's prior written consent or approval to any future similar act or transaction.

Section 23.7 Entire Agreement.

This Lease contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

Section 23.8 Successors and Assigns.

The terms herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, its successors and assigns (including Leasehold Mortgagees, Associations, Sublessees, and Space Lessees as appropriate and applicable), except as may be otherwise provided herein.

Section 23.9 Station and System Plans.

Landlord agrees, at the request of Tenant, to make available to Tenant for inspection all plans, specifications, working drawings and engineering data in the possession of Landlord, or available to it, relating to the Station, the System and other facilities of Landlord in Miami-Dade County, it being understood and agreed that Tenant will reimburse Landlord for any duplication costs incurred in connection therewith and Landlord assumes no responsibility or liability for the information obtained pursuant to this Section.

Section 23.10 Holidays.

It is hereby agreed and declared that whenever the day on which a payment due under the terms of this Lease, or the last day on which a response is due to a notice, or the last day of a cure period, falls on a day which is a legal holiday in Miami-Dade County, Florida, or on a Saturday or Sunday, such due date or cure period expiration date shall be postponed to the next following business day. Any mention in this Lease of a period of days for performance shall mean calendar days.

Section 23.11 Schedules.

Each Schedule referred to in this Lease has been initialed by the parties and forms an essential part of this Lease. The Schedules, even if not physically attached, shall be treated as if they were part of the Lease.

Section 23.12 Brokers.

Landlord and Tenant hereby represent and agree that no real estate broker or other person is entitled to claim a commission as a result of the execution and delivery of this Lease.

Section 23.13 Protest Payments.

If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, in addition to the rights set forth in Article 19 herein, Tenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of Tenant to seek the recovery of such sum, and if it should be adjudged that there was no legal obligation on Tenant to pay such sum or any part thereof, Tenant shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease; and if at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions of this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and there shall survive the right upon the part of said Tenant and/or Landlord to seek the recovery of the cost of such work, and if it shall be adjudged that there was no legal obligation on the part of said Tenant and/or Landlord to perform the same or any part thereof, said Tenant and/or Landlord shall be entitled to recover the cost of such work or the cost of so much thereof as Tenant or Landlord was not legally required to perform under the provisions of this Lease.

Section 23.14 Radon.

In accordance with Florida law, the following disclosure is hereby made:

RADON GAS: Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed over time. Levels

of radon that exceed Federal and State Guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from a county public health unit.

Section 23.15 Energy-Efficiency Rating Disclosure.

In accordance with Florida law, the following disclosure is hereby made:

Tenant may have the Property's energy efficiency rating determined. Tenant acknowledges that it has received from Landlord a copy of The Florida Building Energy-Efficiency Rating System Brochure as provided by the State of Florida Department of Community Affairs.

Section 23.16 Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

Section 23.17 Counterparts.

This Lease may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

Section 23.18 Documents Incorporated and Order of Precedence.

Landlord and Tenant acknowledge that Miami-Dade County issued a Request for Proposals for Joint Development at the Omni Bus Terminal, that Tenant submitted the Proposal in response to that Request for Proposals and that the Request for Proposals and Tenant's Proposal were the basis for award of this Lease.

Section 23.19 Vendor Registration and Forms.

Tenant shall be a registered vendor with the County for the duration of the Lease. In becoming a Registered Vendor with Miami-Dade County, Tenant confirms its knowledge of and commitment to comply with the following:

A. *Miami-Dade County Ownership Disclosure Affidavit*
(Section 2-8.1 of the County Code)

I. *Miami-Dade County Living Wage Affidavit*
(Section 2-8.9 of the County Code)

- | | |
|---|--|
| <p>B. Miami-Dade County Employment Disclosure Affidavit (Section 2-8-1(d)(2) of the County Code)</p> <p>C. Miami-Dade Employment Drug-free Workplace (Section 2-8.1.2(b) of the County Code)</p> <p>D. Miami-Dade Disability and Nondiscrimination Affidavit (Section 2-8.1.5 of the County Code)</p> <p>E. Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the County Code)</p> | <p>J. Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the County Code)</p> <p>K. Subcontracting Practices (Ordinance 97-35)</p> <p>L. W-9 and 8109 Forms (as required by the Internal Revenue Service)</p> <p>M. FEIN Number or Social Security Number</p> |
|---|--|

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- | | |
|---|--|
| <p>F. Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the County Code)</p> <p>G. Miami-Dade Code of Business Ethics Affidavit (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)</p> <p>H. Miami-Dade County Family Leave Affidavit (Article V of Chapter 11 of the County Code)</p> | <ul style="list-style-type: none">▪ Identification of individual account records▪ To make payments to individual/Contractor for goods and services provided to Miami-Dade County▪ Tax reporting purposes▪ To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records <p>N. Antitrust Laws By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.</p> |
|---|--|

Section 23.20 Conflict of Interest.

Section 2-11.1(d) of Miami-Dade County Code, as amended, requires any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County that is competing or applying for any such agreement as it pertains to the Request for Proposals solicitation, must first

request a conflict of interest opinion from the County's Ethics Commission prior to their immediate family member entering into any agreement or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employees immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Lease voidable.

Section 23.21 Cooperation; Expedited Permitting.

The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Lease, including, without limitation, securing street closings, platting and other developmental approvals. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Lease. Landlord shall use its best efforts to expedite the permitting and approval process in an effort to assist Tenant in obtaining its Permits and achieving its development and construction milestones for the Project.

**ARTICLE 24
Representations and Warranties**

Section 24.1 Landlord's Representations and Warranties.

Landlord hereby represents and warrants to Tenant that:

- (a) It has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Landlord have the authority to bind Landlord and to enter into this transaction and Landlord has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.

- (b) Landlord will deliver possession of the Land to Tenant free and clear of any and all tenancies and occupancies of every nature whatsoever, whether by Miami-Dade County or otherwise, and also free and clear of any violations by Miami-Dade County of Laws and Ordinances, except as may be agreed by Tenant in writing, and subject only to the rights reserved herein to Landlord.
- (c) Throughout the term of this Lease, Landlord will endeavor to continue transit service to and from the Station on a daily basis. The parties acknowledge that service disruptions occur occasionally and such disruptions shall not be considered termination of service under this Lease. If the Station is damaged or destroyed and as a result trains cannot stop thereat, the foregoing sentence shall not apply during the period of repair and rebuilding done in accordance with Section 16.2.
- (d) Tenant acknowledges that, in accordance with Section 125.411(3) of the Florida State Statutes, Landlord does not warrant the title or represent any state of facts concerning the title to the Demised Premises, except as specifically stated in this Lease.

Section 24.2 Tenant's Representations and Warranties.

Tenant hereby represents and warrants to Landlord that it has full power and authority to enter into this Lease and perform in accordance with its terms and provisions and that the parties signing this Lease on behalf of Tenant have the authority to bind Tenant and to enter into this transaction and Tenant has taken all requisite action and steps to legally authorize it to execute, deliver and perform pursuant to this Lease.

**ARTICLE 25
Compliance With Federal Regulations**

Tenant shall comply with all of the following statutes, rules, regulations and orders to the extent that these are made applicable by virtue of the grant to Landlord under the Urban Mass Transportation Act of capital grant for Metrorail:

- (a) requirements found in 49 CFR Part 26.7 regarding nondiscrimination based on race, color, national origin or sex;
- (b) requirements found in 49 CFR Parts 27.7 and 27.9(b) and 37 regarding non-discrimination based on disability and complying with the Americans With Disabilities Act with regard to any improvements constructed;
- (c) requirements contained in the Federal Transit Administration Master Agreement relating to conflicts of interest, debarment and suspension.

ARTICLE 26

Station Pedestrian Bridge and Easement

Section 26.1 Station Pedestrian Bridge.

As an amenity of the Demised Premises and to promote transit usage of the Station and System, Tenant at its sole option, may construct an elevated pedestrian bridge connecting the Building on the Demised Premises with the uppermost platform of the Station (the "Station Pedestrian Bridge"). The plans, drawings and calculations for the Station Pedestrian Bridge shall be included with the plans, drawings and calculations for the Improvements on the Demised Premises and subject to the precedent to construction in Section 1.4(e). The design, approval and construction of the Station Pedestrian Bridge shall otherwise be subject to and in accordance with this Lease as if same were part of the Demising Premises and the Improvements.

Section 26.2 Station Pedestrian Bridge Easement Area.

In addition to owning the Land and the Station, Landlord owns the real property between the Land and the Station (the "Connecting Parcel"). The location and area in which the Station Pedestrian Bridge is located shall be in the vertical air space above the Connecting Parcel, shall be agreed upon by Landlord and Tenant and is herein called the "Station Pedestrian Bridge Easement Area".

Section 26.3 Approvals.

Landlord shall promptly apply for and diligently pursue all applicable and necessary approvals that may be required in connection with the Station Pedestrian Bridge, the Station Pedestrian Easement Area and the inclusion of same within the Demised Premises and within six (6) months after the Initial Commencement Date shall obtain all such approvals. Tenant shall cooperate with Landlord as shall be reasonably required in connection with the foregoing. In the event that Landlord fails to do any of the items required by this Section 26.3 within such six (6) month period, such failure shall result in an Unavoidable Delay and the provisions of Section 3.8 shall apply.

Section 26.4 Construction of Station Pedestrian Bridge.

Following receipt of all necessary approvals, Tenant shall, at Tenant's sole cost and expense, construct the Station Pedestrian Bridge in accordance with the Plan and Specifications therefor as part of and in accordance with the requirements of this Lease as if same were part of the Improvements.

Section 26.5 Ongoing Maintenance and Repair of the Station Pedestrian Bridge.

Following Tenant's completion of the Station Pedestrian Bridge, Tenant shall have the continuing obligation to repair and maintain it in a state of good condition. All costs and expenses with respect to repairs and maintenance shall be borne by Developer. If pursuant to Section 3.7(b) of this Lease, Tenant elects to cease its maintenance obligations thereunder due to a discontinuance, curtailment or cessation of the Station, Tenant shall likewise be permitted to cease its obligations to perform the repairs and maintenance hereunder during such period.

Section 26.6 Grants of Easements.

To facilitate Tenant's construction of the Station Pedestrian Bridge and the continued repairs and maintenance thereto and the pedestrian usage thereof, Landlord hereby grants and declares the following perpetual, non-exclusive easements, rights and privileges in, on, over, under, above and across the Station Pedestrian Bridge Easement Area:

- (a) **General Construction Easements.** Non-exclusive perpetual easements, rights and privileges for access and temporary encroachments by Tenant, its agents and all contractors, subcontractors, suppliers and any other related parties for ingress and egress and access, movement and use of personnel, machinery, equipment and construction materials, and for the use, staging and storage of machinery, equipment and construction materials upon the Station Pedestrian Bridge Easement Area during construction of the Station Pedestrian Bridge to the extent reasonably necessary to construct the Station Pedestrian Bridge.
- (b) **Continuing Obligations Access Easements.** Non-exclusive perpetual easements, rights and privileges for access by Tenant, its agents and all contractors, subcontractors, suppliers and other related parties over the Station Pedestrian Bridge Easement Area to perform the continuing repairs and maintenance to the Station Pedestrian Bridge.
- (c) **Pedestrian Passage.** Non-exclusive perpetual easements, rights and privileges for pedestrian ingress, egress and passageway to, from, over, and across the Station Pedestrian Bridge which shall be necessary or desirable for entrance, exit and passageway to and from the Public Areas of the Demised Premises, and to and from the Station and the System for the use in common of the Landlord and Tenant, and

their respective successors, assigns, patrons, tenants, invitees and all other persons having business with any of them or using the Station or System.

Section 26.7 Covenants Run With the Land.

The provisions of this Article 26 shall be binding upon, appurtenant to and for the benefit of the Demised Premises, the Station, the Station Pedestrian Bridge Easement Area, and each part thereof, and shall run with the land. This Article 26 shall be included in a memorandum that shall be recorded in the Public Records of Miami-Dade County, Florida.

Section 26.8 Successors and Assigns. This Article 26 shall inure to the benefit of and be binding upon the Landlord, Tenant and each of their respective successors and assigns, and upon any person acquiring the Station, Station Pedestrian Bridge, the Easement Area, the Demised Premises, or any portions thereof, whether by operation of law or otherwise. In addition, the terms of Article 17 shall apply to the Station Pedestrian Bridge and Station Pedestrian Bridge Easement Area as if same were part of the Lease and Demised Premises.

Section 26.9 Duration of Easement. This Article 26 shall be perpetual, and may not be terminated and shall not terminate without the written consent of the Landlord and Tenant; provided, however, this Article 26 shall automatically terminate upon the scheduled expiration date of this Lease pursuant to its terms (including as same may be renewed), or this Lease terminates for any reason prior to its scheduled expiration date.

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed in its name by the County Mayor; as authorized by the Board of County Commissioners, and Tenant has caused this Lease to be executed by its duly authorized representative all on the day and year first hereinabove written.

(OFFICIAL SEAL)

LANDLORD:

ATTEST:

MIAMI-DADE COUNTY, a
political subdivision of the State of Florida

HARVEY RUVIN, CLERK

BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Name: Carlos A. Gimenez
Title: Mayor

Approved by the County Attorney as to form
And legal sufficiency. _____

Print Name: _____

STATE OF FLORIDA

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of ____, 2016, by Carlos A. Gimenez, as Mayor Miami-Dade County, Florida, a political subdivision of the State of Florida by its Board of County Commissioners on behalf of such entity. Said individual is personally known to me or produced _____ as identification.

My commission expires:

Notary Public, State of Florida

Signed in the presence of:

TENANT

RESORTS WORLD MIAMI LLC, a
Delaware limited liability company

Print Name: Daniel Dominguez

Print Name: Stacey Shaw

By: Edward Farrell, president

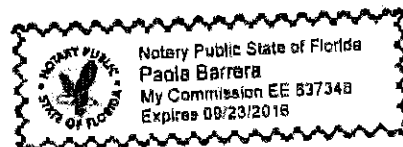
STATE OF FLORIDA

COUNTY OF Dade

The foregoing instrument was acknowledged before me this 9 day of May, 2016, by Edward Farrell, as President of RESORTS WORLD MIAMI LLC, a Delaware limited liability company on behalf of the limited liability company. Said individual is personally known to me or produced _____ as identification.

My commission expires: 9/23/16

Paola Barrera
Notary Public, State of Florida



Schedule 1.1

Land and Air Rights Legal Description

Schedule 1.3

Phase I Improvements

Schedule 1.4

Sample Settlement Monitoring Plan

Schedule 1.5

Interim Bus Terminal Specifications

Schedule 1.6

Interim Bus Terminal Lease

Schedule 1.7

Interim Bus Terminal Site

Schedule 7

Insurance Requirements

Schedule 22.2

Form of Landlord's Estoppel Certificate